

83-449

No. 83-

Office - Supreme Court, U.S.
FILED
AUG 26 1983
ALEXANDER L. STEVAS,
CLERK

In the
Supreme Court of the United States

OCTOBER TERM, 1983

BURKE DISTRIBUTING CORPORATION,
d/b/a B&W TRANSPORTATION,
GEORGE KYER ENTERPRISES, INC.,
and BOSTON-BUFFALO EXPRESS, INC.,
APPELLANTS,

v.

COMMONWEALTH OF MASSACHUSETTS,
APPELLEE.

ON APPEAL FROM THE SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH OF MASSACHUSETTS

JURISDICTIONAL STATEMENT

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I

QUESTIONS PRESENTED

1.

Whether the analysis and reasoning of the Supreme Judicial Court with respect to Appellants' Fourteenth Amendment equal protection challenge of a Massachusetts law properly applies standards enunciated by this Court?

2.

Whether 730 C.M.R. 4.02 is repugnant to Fourteenth Amendment equal protection safeguards?

3.

Whether established standards regarding appellate review of trial court factual findings are applicable to cases involving equal protection challenges?

4.

Whether the standard and mode of analysis applied by the Supreme Judicial Court is inconsistent with and contrary to the decisions of this Court under the Commerce Clause?

5.

Whether 730 C.M.R. 4.02 is a safety regulation requiring the presumption of validity under the Commerce Clause assigned to it by the Supreme Judicial Court?

6.

Whether the burdens imposed upon interstate commerce through enforcement of 730 C.M.R. 4.02 were properly analyzed and balanced against asserted state interests?

7.

Whether 730 C.M.R. 4.02 is subject to the less restrictive alternative test enunciated by this Court?

8.

Whether, consistent with due process safeguards against vagueness embodied in the Fourteenth Amendment, a regulation which contains conflicting provisions can be sustained?

9.

Whether 730 C.M.R. 4.02 violates the Fourteenth Amendment due process requirement that a law be substantially related to the public purpose sought to be attained?

II

PARTIES

The parties constituting Defendants-Appellees below were B&W Transportation, Inc., R.F.C. Transport, Inc., and George Kyer Enterprises, Inc. Subsequent to the decision of the Massachusetts Supreme Judicial Court, Burke Distributing Corporation was merged into B&W, which simultaneously changed its name to Burke Distributing Corporation. Also, two corporations merged with R.F.C. Transport, which simultaneously changed its name to Boston-Buffalo Express, Inc. The present appellants have no parent companies, subsidiaries or affiliates.

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**In the
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OCTOBER TERM, 1983

No. 83-

B&W TRANSPORTATION, INC., GEORGE KYER
ENTERPRISES, INC., AND R.F.C. TRANSPORT, INC.,
APPELLANTS,

v.

COMMONWEALTH OF MASSACHUSETTS,
APPELLEE.

**ON APPEAL FROM THE SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH OF MASSACHUSETTS**

JURISDICTIONAL STATEMENT

Opinions Below

The decision of the Supreme Judicial Court is reported at 388 Mass. 799, 448 N.E.2d 728 (1983), and is set forth in Appendix A, pp. A-1 - A-11. The memorandum of Decision of the District Court is not reported but is set forth in Appendix B, pp. A-12 - A-28.

Jurisdiction

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(2), this being an appeal which draws into question the validity of 730 C.M.R. 4.02¹ on the grounds that it is repugnant to the Constitution of the United States.

Appellants appeal from a decision of the Massachusetts Supreme Judicial Court, vacating the Order of the Trial Court dismissing the Complaints against them. The Trial Court, in response to Appellants' Motion For A Required Finding Of Not Guilty, Or, In The Alternative, Dismissal Of The Complaints, dismissed the Complaints, ruling that the regulation at issue violates equal protection safeguards embodied in the Massachusetts and United States Constitutions. The Trial Court did not reach issues raised by Appellants regarding whether 730 C.M.R. 4.02 violates due process provisions of the state and federal constitutions, and whether the same regulation is repugnant to the Commerce Clause.

The Supreme Judicial Court expressly ruled that 730 C.M.R. 4.02 does not violate equal protection or due process provisions of the state and federal constitutions, and that it is not repugnant to the Commerce Clause. The Court remanded the cases against Appellants for trial. Subsequently, the Supreme Judicial Court denied Appellants' Petition for Rehearing.²

Thus, there has been a final ruling with respect to Appellants' constitutional challenge of 730 C.M.R. 4.02. The decision of the Supreme Judicial Court gave rise to a situation which fully met the criteria for finality set forth by this Court. *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1974); *Mills v. State of Alabama*, 384 U.S. 214 (1966); *Rosenblatt v. American Cyanamid Co.*, 86 S.Ct. 1 (1965). Moreover, on remand, the Trial Court subsequently found Appellants guilty

¹ Section 4.02 of Title 730 of the Code of Massachusetts Regulations, the full language of which is set forth in Appendix I, pp. A-49—A-50.

² Appendix C, p. A-29.

of violating 730 C.M.R. 4.02 and assessed full statutory penalties.³ Appellants raised no new issues or arguments on remand relating to their equal protection, due process and Commerce Clause challenges. Consequently, the issues presented herein are not subject to further review in Massachusetts.

The Supreme Judicial Court rendered its decision on April 15, 1983. Appellants timely filed a petition for rehearing⁴ which was denied by the Court on April 29, 1983. Timely notice of appeal to this Court was filed in the Massachusetts Supreme Judicial Court and the Worcester District Court on July 14, 1983.⁵ Appellants subsequently filed an Application For Extension Of Time To Docket Case⁶ which was granted by Order of this Court extending such time to and including August 27, 1983.⁷

In the alternative, should this Court not consider this appeal as the proper mode of review, Appellants respectfully request that the papers upon which this appeal is taken be regarded and acted upon as a petition for a Writ of Certiorari, pursuant to 28 U.S.C. §2103.

Constitutional and Regulatory Provisions Involved

The Constitutional provisions which Appellants contend have been violated by the decision of the Supreme Judicial Court are the following clauses of the Fourteenth Amendment to the Constitution of the United States:

...nor shall any state deprive any person of life, liberty, or property, without due process of law;

...nor deny to any person within its jurisdiction the equal protection of the laws.

³ This decision was rendered July 14, 1983. No written order was issued by the Court.

⁴ Appendix G, pp. A-35—A-39.

⁵ Appendix D, p. A-30.

⁶ Appendix E, p. A-31.

⁷ Appendix F, p. A-34.

Appellants further contend that the decision of the Supreme Judicial Court violates Article 1, §8, cl. 3 of the Constitution of the United States, the Commerce Clause:

The Congress shall have Power . . . to regulate Commerce with foreign Nations, and among the several states, and with the Indian Tribes;

This case also involves 730 C.M.R. 4.02, the text of which has been fully set forth in Appendix I at pp. A-49—50.

Statement of the Case

Appellants, B&W Transportation, Inc., George Kyer Enterprises, Inc., and R.F.C. Transport, Inc. (hereinafter "Appellants") all interstate trucking companies, were charged through citations issued in 1981 by Massachusetts State Police officers with violation of 730 C.M.R. 4.02,⁸ a regulation of the Massachusetts Turnpike Authority (hereinafter "Authority") setting forth certain weight limitations for tandem-trailer vehicles.⁹ Specifically, Appellants were cited for operating tandem-trailer vehicles in excess of an asserted 127,400 pound gross weight limit.¹⁰

The Authority is authorized by the Massachusetts Legislature (G.L. c. 81, App. §1-5)¹¹ to "establish rules and regulations for the use of the turnpike" and pursuant to that authority has promulgated all regulations, including weight classifications and restrictions, pertaining to tandem-trailer vehicles and single tractor-trailer vehicles.¹²

In June of 1980 the Authority amended its regulations pertaining to single tractor-trailer units by increasing the gross load allowance for units with four or more axles from 73,000

⁸ Appendix I, pp. A-49—A-50

⁹ Tandem-trailer vehicles, as described in 730 C.M.R. 4.01, consist of a tractor, a semi-trailer, a "dolly" hitch, and a second semi-trailer.

¹⁰ Appendix J, A.-97—A.-98.

¹¹ Appendix H, p. A-43.

¹² 730 C.M.R. 5.00 *et seq.* as set forth at Appendix I, pp. A-67—A-86.

pounds to 80,000 pounds.¹³ At the same time, the Authority established a "reducible load" system (RL card) which enabled owners of such single trailer units to operate vehicles with four axles on the Turnpike with gross weights up to 87,000 pounds. Vehicles with five axles were allowed a gross weight of 99,000 pounds.¹⁴ Reducible load cards permit unlimited travel at these higher gross weights for a period of one year and are routinely granted and renewed.¹⁵ At the time these gross weight increases were effected, no proportionate increases were allowed to tandem-trailer units.¹⁶ Since 1977, the New York Thruway has allowed tandem-trailers identical to those regulated by the Massachusetts Turnpike Authority to operate at a gross weight of 143,000 pounds.¹⁷ Appellants' interstate tandem-trailer operations are between New York State, via the New York Thruway, and Massachusetts, via the Turnpike.¹⁸

In response to the charges against them, Appellants on May 11, 1981, filed their Motion For A Required Finding Of Not Guilty, Or, In The Alternative, Dismissal Of The Complaints¹⁹ challenging 730 C.M.R. 4.02 on the grounds that it violates equal protection and due process safeguard, embodied in the constitutions of the Commonwealth and the United States. Appellants also claimed §4.02 is repugnant to the Commerce Clause. The Trial Court, treating Appellants' motion as one seeking dismissal, ordered an evidentiary hearing which commenced June 4, 1981 and included four days of testimony and introduction of various engineering reports and standards.²⁰ The vast majority of testimony was by engineering experts, and dealt with the relative impact upon the bridges and roads

¹³ Appendix I, p. A-87.

¹⁴ Appendix I, p. A-89.

¹⁵ Appendix B, p. A-17, §§ 14 and 17.

¹⁶ Appendix B, p. A-16, ¶

¹⁷ Appendix B, p. A-15—A-16, §§ 8, 9 and 10.

¹⁸ Appendix B, p. A-13, ¶ 1.

¹⁹ Appendix J, p. A-95.

²⁰ Appendix B, p. A-12, ¶2.

of the Turnpike of single tractor-trailers and tandem-trailers carrying gross loads allowed by the Authority's regulations, as well as weights beyond regulatory limits. In essence, Appellants claimed, based on expert analysis, that single tractor-trailers carrying an allowable 99,000 pound gross load within the confines of five axles and one semi-trailer unit, were, by virtue of the regulatory weights assigned, allowed to cause substantially greater stress and deterioration to Turnpike bridges and road surfaces than tandem-trailers which carry their weight—now limited to 127,400 pounds—on eight or nine axles spread over twice the carrying length.

After taking the matter under advisement, the Trial Court issued on July 23, 1981 a comprehensive Memorandum of Decision²¹ which included numerous and detailed factual findings and concluded that the weight classifications and restrictions imposed by 730 C.M.R. 4.02 were arbitrary and not rationally related to the established public purpose of preserving bridges and their surfaces.²² In so concluding, the Trial Court found that while tandem-trailers are restricted by axle weight as well as gross weight, single tractor-trailers have no axle weight limitations, although axle loads bear a direct relationship to bridge deterioration.²³ The Trial Court also found that since 95% of the bridges on the Turnpike are too short to carry an entire tandem-trailer rig, the impact of such tandems, loaded to a gross weight of 143,000 pounds, rather than the existing 127,400 pound limit, was well within allowable engineering standards applied by the Authority.²⁴ Further, with regard to longer spans capable of carrying the full length of a tandem-trailer, the Trial Court found, based upon analysis of the longest single-span bridge on the Turnpike,²⁵

²¹ Appendix B, pp. A-12—A-28.

²² Appendix B, p. A-22, ¶5.

²³ Appendix B, p. A-17, ¶16.

²⁴ Appendix B, pp. A-18, A-20, A-21, ¶¶ 19 and 27.

²⁵ The 145-foot Gratton Street Bridge, is designated a single-span bridge because it has no piers to help support the middle of its carrying beams.

that a tandem-trailer loaded to a gross weight of 150,870 pounds caused less stress and fatigue to the bridges' structural members than a single tractor-trailer loaded to its allowable gross weight limit of 99,000 pounds.²⁶ The Trial Court specifically noted that the findings resulted from the increased number of axles and superior load distribution capabilities of tandem-trailers.²⁷

On the basis of these findings, the Trial Court ruled that 730 C.M.R. 4.02 violates equal protection safeguards embodied in the state and federal constitutions.²⁸

While not reaching the issue of due process, and specifically vagueness, the Trial Court also found that the three separate tandem-trailer weight provisions contained in §4.02 are in conflict.²⁹ The Court particularly noted that one sentence in §4.02 restricts the gross weight of a tandem's tractor and first trailer to 71,000 pounds,³⁰ although a separate clause within the same section provides Appellants with a formula which, when applied to their vehicles, produces a variant statutory limit.³¹

The Commonwealth appealed the ruling of the Trial Court, and the Massachusetts Supreme Judicial Court granted the parties' joint application for direct appellate review.³² The Supreme Judicial Court reversed the Trial Court, ruling that §4.02 did not violate equal protection and due process provisions of the state and federal constitutions, and further that the challenged regulation was not repugnant to the Commerce Clause. As to the equal protection and due process challenges, the Court found that there was at least "some" evidence in the record supporting the rationality of §4.02, as well as its

²⁶ Appendix B, p. A-20, ¶25.

²⁷ Appendix B, p. A-20, ¶26.

²⁸ Appendix B, p. A-22, ¶5.

²⁹ Appendix B, p. A-17, ¶15.

³⁰ Appendix B, p. A-17, ¶15.

³¹ Appendix B, p. A-15, ¶7.

³² Appendix A, p. A-2.

classifications and weight restrictions.³³ The Court rejected Appellants' vagueness claim by finding that one of the several provisions in §4.02 dealing with gross weight was clear and unambiguous.³⁴ Finally, the Court found that the same quantum of evidence supporting rationality was sufficient to overcome any asserted burden on interstate commerce.³⁵ The Court vacated the order dismissing the complaints, and remanded the cases for trial.³⁶ Appellants filed a petition for rehearing³⁷ which was denied.³⁸ Appellants subsequently filed their Notice of Appeal to this Court pursuant to 28 U.S.C. §1257(2).³⁹

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

1.

The Decision of the Supreme Judicial Court Presents the Substantial Question Whether Its Analysis and Reasoning With Respect to Appellants' Fourteenth Amendment Equal Protection Challenge of 730 C.M.R. 4.02 Properly Applies Standards Enunciated by This Court.

Appellants' equal protection challenge of the Massachusetts regulation at issue is based upon substantial evidence, much of which is of a specialized and somewhat technical nature (i.e. engineering reports and testimony of expert witnesses in the field of bridge and road construction). In this respect, Appellants' action is similar to a certain group of Fourteenth Amendment cases considered by this Court. *United States v. Carolene Products Co.*, 304 U.S. 144 (1938); *Borden's Co. v. Baldwin*, 293 U.S. 194 (1934); *Sproles v. Binford*, 286 U.S. 374 (1932); *Weaver v. Palmer Bros. Co.*, 270 U.S. 402 (1926);

³³ Appendix A, p. A-4

³⁴ Appendix A, p. A-7

³⁵ Appendix A, p. A-10

³⁶ Appendix A, p. A-11

³⁷ Appendix G, pp. A-35—A-39.

³⁸ Appendix C, p. A-29.

³⁹ Appendix D, p. A-30.

Burns Baking Co. v. Bryan, 264 U.S. 504 (1924). Appellants respectfully submit that the opinion of the Massachusetts Supreme Judicial Court⁴⁰ on this issue presents analysis which is fatally flawed, and demonstrates misapplication of certain equal protection standards and principles enunciated by this Court. Further, the Supreme Judicial Court's ruling stands ultimately for the proposition that if a legislature or other administrative body can offer one fact or opinion in support of the rationality of a regulatory classification then, notwithstanding the falsity or incredibility of such fact or opinion as determined by the Trial Court, any challenge to that regulation based upon Fourteenth Amendment equal protection standards must fail. Appellants submit that this ruling is in direct conflict with the analysis and holdings of this Court in the cases above listed, as well as others,⁴¹ and that it has resulted in the continued enforcement of a law which is arbitrary and oppressively discriminatory and which classifies and restricts with no "fair and substantial relation"⁴² to its established public purpose.

Appellants' equal protection challenge to 730 C.M.R. 4.02 is premised upon its assertion, confirmed by both the Trial Court and the Supreme Judicial Court,⁴³ that the object of the regulation is the preservation of bridges and their surfaces on the Massachusetts Turnpike system.⁴⁴ In essence Appellants claim that the weight classifications and restrictions set forth in 730 C.M.R. 4.02 violate Fourteenth Amendment equal protection safeguards in that they are unreasonably and arbitrary.

⁴⁰ Appendix A, pp. A-1 through A-11.

⁴¹ *Eisenstadt v. Baird*, 405 U.S. 438 (1972); *Meyer v. Nebraska*, 262 U.S. 390 (1923).

⁴² *Reed v. Reed*, 404 U.S. 71 (1971).

⁴³ Appendix B, p. A-21, ¶1; Appendix A, pp. A-5—A-6.

⁴⁴ Appellants also asserted, and it appears manifest, that such weight regulations also address preservation of road surfaces. See *State v. Amyot*, 119 N.H. 671, 407 A.2d 812 (1979) and *Sterling H. Nelson & Sons, Inc. v. Bender*, 95 Idaho 813, 520 P.2d 860 (1974).

trarily limiting when analyzed in comparison with the Authority's weight classifications and restrictions of single tractor trailers (730 C.M.R. 5.04 *et seq.*).⁴⁵ The theory underlying this analysis—and indeed Appellants' equal protection challenge—is that longer vehicles with more axles can carry much heavier loads while causing less stress and deterioration to the Turnpike's bridges and roads than shorter vehicles with fewer axles.⁴⁶ Therefore, existing Turnpike weight classifications, which allow a single tractor to carry 99,000 pounds, gross,⁴⁷ while restricting tandem-trailers to a flat gross weight of 127,400 pounds,⁴⁸ not only bear no rational relation to the public purpose sought to be achieved, but result in severe economic disadvantage to tandem-trailer operators since the increased equipment overhead required for such operations impacts directly (along with quantity of goods) on potential freight rates. Prior to 1980, single tractor-trailers had been limited to a gross weight of 73,000 pounds.⁴⁹ Amendments made effective by the Authority in 1980⁵⁰ raised the gross weight limit for single tractor-trailers to 99,000 pounds, without any requirement of equipment modification or design⁵¹ which might ameliorate the impact of such loads on bridges or roads.⁵²

After receiving documentary evidence and expert testimony which consumed four days of hearings, the Trial Court ruled that §4.02 violates state and federal equal protection

⁴⁵ Appendix I, pp. A-87—A-94.

⁴⁶ In reality all vehicles including automobiles, regardless of their weight, produce some stress and deterioration of bridges and roads. Thus weight limits placed on trucks more accurately have as their public purpose the maintenance of an acceptable level of stress and deterioration.

⁴⁷ Appendix I, pp. A-88—A-90.

⁴⁸ Appendix I, pp. A-49—A-50.

⁴⁹ Appendix I, p. A-69.

⁵⁰ Appendix I, pp. A-87-A-94.

⁵¹ However, single tractor-trailers carrying 99,000 pound loads must have five axles.

⁵² Appendix B, p. A-17, ¶14.

safeguards.⁵³ In so ruling the Trial Court made several direct and supporting factual findings regarding the impact of single and tandem-trailer vehicles on bridges⁵⁴ and, specifically, one key finding with respect to stress and fatigue on longer spans occasioned by vehicles in these weight classes:

By application of the Overstress and Fatigue Standards described in paragraphs #21 through #24 of these findings, to a test module utilizing a *tandem-trailer loaded up to . . . (a gross weight of 150,870 lbs.) on the longest single-span bridge on the Turnpike*, I find the range of stress and fatigue to be within the 1977 AASHO allowables and *slightly less than that produced by a single (semi) tractor-trailer loaded to the 99,000 lbs. limit.*⁵⁵ (Emphasis added)

The Supreme Judicial Court ruled that 730 C.M.R. 4.02 "does not violate equal protection . . . principles"⁵⁶ reasoning that the Commonwealth had "offered some evidence" supporting the rationality of its classifications.⁵⁷ The evidence referenced by the Supreme Judicial Court consisted of a small portion of the testimony of one of the Commonwealth's expert witnesses regarding his interpretation of two overstress numbers on one bridge of the Turnpike system.⁵⁸ It is significant that this testimony was not only contradictory to the general and specific findings of the Trial Court regarding the impact of single and tandem-trailer vehicles on longer bridges, but that the very bridge discussed by the Commonwealth's expert at this point in his testimony was the Gratton Street Bridge, the same bridge referenced by the Trial Court in the

⁵³ Appendix B, p. A-22, ¶5.

⁵⁴ Appendix B, pp. A-19 through A-21, ¶¶22 through 28.

⁵⁵ Appendix B, p. A-20, ¶25. Significantly, the bridge referenced, the Gratton Street Bridge, is 145 feet long, and therefore would regularly bear the weight of a full tandem-trailer in its center. Since it is a single-span bridge it has no supporting piers in the middle.

⁵⁶ Appendix A, p. A-11.

⁵⁷ Appendix A, p. A-4.

⁵⁸ Defendants' Supplemental Appendix to the Supreme Judicial Court, pp. 410-411.

finding cited above. Thus the Trial Court, based upon all testimony heard from expert witnesses, and after assessing levels of expertise and credibility demonstrated by those witnesses, found facts in direct contradiction to portions of the testimonial record relied upon by the Supreme Judicial Court. On the basis of this testimony and one unsupported opinion that tandem-trailers would "adversely affect long-span bridges"⁵⁹ the Supreme Judicial Court reasoned that the disputed weight classifications were at least "debatable"⁶⁰ and that Appellants' claim of arbitrariness must therefore fail.⁶¹ It must be noted that aside from relying upon a small portion of one witness' testimonial evidence in direct contradiction to the factual findings of the Trial Court, the Supreme Judicial Court also misconstrued the findings of the Trial Court in a manner which substantially depreciated that Court's findings regarding the relative impact of single and tandem-trailer vehicles on bridges.⁶² In rejecting Appellants' equal protection challenge on the basis of the "debatable" rationality of §4.02, the Supreme Judicial Court cited *Shell Oil Co. v. Revere, Mass. Adv. Sh.* (1981) 1285, 1292, which relied upon *United States v. Carolene Products Co.*, 304 U.S. 144, 153-154 (1938). *Shell Oil* involved a fruitless attempt to challenge an ordinance banning self-service gasoline stations on the basis that it was not rationally related to the goal of public safety.

A review of *Carolene*, cited by the Supreme Judicial Court, as well as other related cases noted earlier in this section,⁶³ reveals the Court's misplaced reliance upon the principle that "debatable" rationality is sufficient to overcome Appellants' a Fourteenth Amendment equal protection challenge. The obvious linchpin

⁵⁹ Appendix A, p. A-4.

⁶⁰ Appendix A, p. A-5.

⁶¹ Appendix A, p. A-5.

⁶² Compare portion of the Supreme Judicial Court's opinion, Appendix, pp. A-3—A-4, with Appellant's Petition For Rehearing, Appendix G, pp. A-35—A-39, and the portions of the Trial Court opinion cited therein.

⁶³ *Borden's Co.*; *Sproles*; *Weaver*; and *Burns Baking Co.*, cited on pp. 8-9, *supra*.

in that principle is the concept of debatability. In *Carolene*, this Court had, as factual evidence in support of rationality, the results of House and Senate committee reports, which also referenced a previous "extensive investigation",⁶⁴ all leading to the conclusion that "the use of filled milk as a substitute for pure milk is generally injurious to health and facilitates fraud on the public."⁶⁵ Moreover, no reference is made to trial court or other committee findings which might tend to contradict or overcome the facts supporting rationality. In *Borden's Co.* this Court reviewed the dismissal of a complaint which challenged the New York Milk Control Law as violative of the Fourteenth Amendment. Noting that only partially related affidavits and other documents were available for review,⁶⁶ this Court stated:

With the notable expansion of the scope of governmental regulation, and the consequent assertion of violation of constitutional rights, it is increasingly important that when it becomes necessary for the Court to deal with the facts relating to particular commercial or industrial conditions, *they should be presented concretely with appropriate determinations upon evidence*, so that conclusions shall not be reached without adequate factual support.⁶⁷ (Emphasis added)

Aside from acknowledging the need for adequate factual basis upon which to decide growing constitutional challenges, this Court recognized the propriety of proceeding on appeal based upon "appropriate *determinations upon evidence*"⁶⁸ in the form of trial court findings. Similarly, in *Sproles*, this Court rejected an equal protection challenge to a provision of the Texas Motor Vehicle Act on the basis of extensive District Court findings, which were set forth at length in the opinion,

⁶⁴ *Carolene*, *supra*, at 148.

⁶⁵ *Id.* at 149.

⁶⁶ *Id.* at 208.

⁶⁷ *Id.* at 210.

⁶⁸ *Id.* at 210. (Emphasis added).

and which more than adequately supported the rationality of the challenged exemptions. The analysis and reasoning of this Court in *Carolene* and *Sproles* stands in stark contrast to the Supreme Judicial Court's reliance upon rejected testimonial evidence as support for an otherwise arbitrary and oppressive law. Further, the reasoning of the decision of this Court in *Burns Baking Co.* is particularly notable in that the facts discussed demonstrated legislative rationality of a genuinely more "debatable" nature.⁶⁹ There, despite the less than clean-cut nature of the arbitrariness asserted, this Court found the law repugnant to the Fourteenth Amendment.

Aside from asserted deficiencies in the Supreme Judicial Court's equal protection analysis, it should be noted that the Court's reliance on limited and rejected testimonial evidence, notwithstanding a thorough and quite competent Memorandum of Decision⁷⁰ by the Trial Court including extensive findings of fact, constitutes clear contravention of settled principles of appellate review. This Court has consistently held that due "deference" must be given to decisions of the trier of fact, "who is usually in a superior position to appraise and weigh the evidence." *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 123 (1969). Thus the standard is not whether the appellate court "would have made the findings the trial court did, but whether 'on the entire evidence [it] is left with the definite and firm conviction that a mistake has been committed'." *Id.*, quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948). This so-called "clearly erroneous" standard, based upon Rule 52(a) F.R.Civ.P. (also Mass. R.Civ.P.) has been even more stringently applied with respect to the conflicting testimony of expert witnesses:

⁶⁹ See particularly the dissent of Mr. Justice Brandeis, with whom Mr. Justice Holmes concurred.

⁷⁰ Appendix B, pp. A-12 through A-28.

... it is the very essence of the trial court's function to choose from among the competing and conflicting inferences and conclusions that which it deems most reasonable. [Citations omitted]. Where, as here, the question turns largely on the testimony of experts, the trial court has the right to decide which set of experts—plaintiff's or defendant's—will be credited. *Evans v. United States*, 319 F.2d 751, 755 (1st Cir. 1963).

This same rule has been consistently followed by the Supreme Judicial Court,⁷¹ and has also been applied in a criminal context. *Commonwealth v. Moynihan*, 376 Mass. 468, 474-475 (1978). The same appellate standard is applied with respect to factual findings analyzed in the context of constitutional challenges. *Grausam v. Murphey*, 448 F.2d 197 (3d Cir. 1971).⁷² Certainly the present case offers no basis for abandoning the superior position and opportunity for insight and assessment of witnesses provided to the Trial Court. Moreover, the Supreme Judicial Court did not expressly reject, reassess or in any way criticize the findings of the Trial Court.

2.

Whether the Standard and Mode of Analysis Applied by the Supreme Judicial Court is Inconsistent With and Contrary to the Decisions of This Court Under the Commerce Clause.

Where a regulation is challenged as being violative of the Commerce Clause, a state does not meet its burden of supporting such law by simply asserting a rational relation to some legitimate public purpose. Rather, this Court imposes a balancing test which considers both the burden on interstate commerce and the asserted local benefit:

⁷¹ *New England Canteen Service, Inc. v. Ashley*, 372 Mass. 671, 675 (1977); *Mass. Electric Co. v. Pacific Nat. Inv. Corp.*, 1980 Mass. App. Ct. Adv. Sh. 1011, 1012.

⁷² See also *Dayton Board of Education v. Brinkman*, 443 U.S. 526, 534 n.8 (1979).

This 'weighing' by a court requires—and indeed the constitutionality of the state regulation depends on—a sensitive consideration of the weight and nature of the state regulatory concern in light of the extent of the burden imposed on the course of interstate commerce. *Kassel v. Consolidated Freightways Corp.*, 450 U.S. 662, 670-671 (1981), quoting *Raymond Motor Transportation, Inc. v. Rice*, 434 U.S. 429, 441 (1978); accord, *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970); *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520, 524 (1959).

The court's balancing test includes a consideration of whether the legitimate local purpose "could be promoted as well with a lesser impact on interstate activities." *Raymond*, *supra*, at 441-442; *Pike*, *supra*, at 142.

The Trial Court ruled, based upon extensive factual findings, that Appellants satisfied their burden under the Fourteenth Amendment of showing that 730 C.M.R. 4.02 has no rational basis, i.e. no relation to its established public purpose. The scales having thus been tipped, the outcome of this Court's balancing test under the Commerce Clause is virtually predetermined.⁷³ Under the Authority's present regulatory scheme, single tractor-trailers carrying gross weights of 99,000 pounds are regularly causing a certain level of stress and deterioration to Turnpike bridges which the Authority has deemed acceptable. Thus, assigning a comparatively low gross weight to tandem-trailers under the guise of preserving Turnpike bridges constitutes imposition of an illusory state concern, which a court must balance against the burdens imposed upon interstate commerce.

The opinion of the Supreme Judicial Court wholly bypasses the accepted mode of analysis developed by this Court. The resulting judgment seriously erodes the constitutional protections guarded by this Court under its Commerce Clause

⁷³ *Raymond*, *supra*, at 429; *Kassel*, *supra*, at 662.

decisions. The accepted principles of analysis established by this Court require the Supreme Judicial Court to address three primary questions. A) Should 730 C.M.R. 4.02 be characterized as a highway safety regulation? B) Does the regulation impose burdens on interstate commerce that clearly outweigh its benefits? C) Could the benefits be promoted as well with a lesser impact on interstate activities?

3.

Whether 730 C.M.R. 4.02 Is a Safety Regulation Requiring the Presumption of Validity Under the Commerce Clause Assigned to It by the Supreme Judicial Court.

The Supreme Judicial Court, without discussion, characterizes the regulation as one designed to promote a state interest in highway safety.⁷⁴ The Court begins its Commerce Clause analysis with the statement:

*"The defendants do not dispute that the Commonwealth has a legitimate interest in regulating truck weights to foster highway safety by preserving bridge and road surfaces."*⁷⁵

By this statement, the Supreme Judicial Court ignores the Trial Court's ruling that "... the legitimate public purpose sought to be achieved by such truck weight limitations is the *preservation of bridges and their surfaces*..."⁷⁶

⁷⁴ In its own footnote, the Supreme Judicial Court concedes the novelty of its perception of §4.02 as a "safety regulation." The Court states:

The United States Supreme Court has discussed highway safety in the context of safe operation of trucks to prevent accidents or hazardous driving conditions but not in the context of bridge stress or road surface deterioration. (cites omitted).

⁷⁵ Appendix A, p. A-8. (emphasis added.)

⁷⁶ See also *State v. Amyot*, 407 A.2d 812, 813 (1971) and *Sterling H. Nelson & Sons, Inc. v. Bender*, 520 P.2d 860, 862 (1974) for the proposition that the principle concern of truck weight regulations is the protection of the highways.

By characterizing §4.02 as a safety regulation, the Supreme Judicial Court fails to acknowledge that the regulation's principal purpose is *to set an acceptable level* of wear and deterioration for the structures and surfaces of the Turnpike. The weight limitations within §4.02 were not meant to, nor can they ever, guarantee the safety of the Turnpike, or the public which utilizes it. The very specific goal of safety, as it pertains to the bridges, is attended to in wholly separate provisions of the Massachusetts General Laws. The Legislature expressly delegates to the Authority the duty "to construct, maintain, repair and operate" the bridges and roads of the Turnpike system. G.L. c. 81 App. §1-5. A second provision specifically delegates the responsibility to ensure that the Turnpike is "maintained and kept in good condition and repair." G.L. c. 81 App. §1-15. The Supreme Judicial Court's characterization of truck weight limitations as safety measures necessarily presumes that the Authority will default on its statutory obligation to maintain the system properly.

Addressing the issue of safety in *Kassel*, this Court emphasized that "the total effect" of the law as a safety measure must be taken into account and that an effect which is "so slight and problematical that it does not outweigh the national interest in keeping interstate commerce free from interferences" will not save a regulation from invalidation.⁷⁷ *Kassel, supra*, at 668. Given the nature of the truck weight regulation at issue, as well as the Trial Court's findings indicating the negligible, if not wholly illusory, protection of the state's interest through the regulation, application of Commerce Clause analysis as enunciated by this Court should, Appellants submit, result in invalidation of §4.02.

⁷⁷ This Court in *Kassel* stated expressly that "the controlling factors" of the case were "*the findings of the District Court... with respect to the relative safety of the types of trucks at issue*" and the substantial burden on interstate commerce. *Kassel, supra* at 678. (emphasis added)

4.

Whether the Burdens Imposed Upon Interstate Commerce Through Enforcement of 730 C.M.R. 4.02 Were Properly Analyzed and Balanced Against Asserted State Interests.

This Court has invalidated regulations imposing commerce burdens similar in type and scale to those imposed by §4.02. The Supreme Judicial Court, however, did not apply the requisite burden analysis set forth in *Raymond* and followed in *Kassel*.⁷⁸

The present case presents two different components of commerce burden: (1) increased costs and lost time occasioned by the necessity to reduce tandem-trailer loads at the Massachusetts state line, and (2) the increased financial burden resulting from hauling trailers as single units in order to comply with Turnpike weight limits. While the Supreme Judicial Court admits that "increased time and expense are factors to be considered in determining the extent of a regulation's burden on interstate commerce,"⁷⁹ it does not consider these factors through any meaningful analysis. Similarly, the Court reiterates the increase in cost of \$286.00 per trip, resulting from the breakdown of a tandem-trailer to two singles, but fails to consider the implications of that figure when analyzed in terms of annual tandem-trailer traffic.⁸⁰ Finally, in a footnote, the Court notes the findings of the Trial Court regarding increased financial burden, but does not address their significance as one of several elements in the burden question. The savings in fuel, diminished drivers' time, greater transport volume, and more efficient pick-up, dispatch and delivery that result from the use of tandem-trailers is *not* minimal, as this Court specifically found in *Raymond*⁸¹ and

⁷⁸ *Raymond*, *supra*, at 445-446 and *Kassel*, *supra*, at 674.

⁷⁹ Supreme Judicial Court quoting *Raymond*, *supra*, at 445.

⁸⁰ This Court in *Pike* found a Commerce Clause violation where the increased cost to the Defendant amounted primarily to a one-time expenditure of \$200,000.00. The Supreme Judicial Court ignored evidence that a tandem trailer owned by Appellant Kyer makes approximately 500 similar trips per year, amounting to an annual increased cost of \$143,000.00 per trailer.

⁸¹ *Raymond*, *supra*, at 432, n.2.

confirmed in *Kassel*.⁸² The failure of the Supreme Judicial Court to properly analyze the "state interest" and "commerce burden" factors to be weighed jeopardizes proper application of the balancing test as surely as if an entirely inappropriate standard of review were employed.⁸³

5.

Whether 730 C.M.R. 4.02 Is Subject to the Less Restrictive Alternative Test Enunciated by This Court.

The Supreme Judicial Court does not examine "whether [the local interest involved] could be promoted as well with a lesser impact on interstate activities."⁸⁴

Defendants fulfilled their burden of presenting such less restrictive alternatives to the Trial Court. Based upon this evidence the Trial Court found that axle weight limitations bear a direct relationship, from an engineering standpoint, to bridge deterioration.⁸⁵ Further, the Trial Court found that the increased number of axles and the better distribution of gross

⁸² *Kassel*, *supra*, at 674.

⁸³ *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 461-462, n.6, citing *Oregon v. Hass*, 420 U.S. 714, 719 (1975).

⁸⁴ *Raymond*, *supra*, at 442; *Pike*, *supra*, at 142; accord, *Great A&P Tea Co. v. Cottrell*, 424 U.S. 366, 371-372 (1975); *Hughes v. Alexandria Scrap Corp.*, 426 U.S. 794, 804 (1976). Appellants recognize that less restrictive alternative analysis was not expressly applied in *Raymond* and *Kassel*. Language in *Bibb*, *supra*, at 524, suggests that such analysis would not be applied where the state interest asserted is clearly related to public safety.

To the extent this principle accounts for the lack of such analysis in *Kassel* and *Raymond*, Appellants submit that the state interest identified with 730 C.M.R. 4.02 (i.e. preservation of bridges) makes this regulation subject to "less restrictive" examination.

However, Appellants further submit that less restrictive alternative analysis in *Kassel* and *Raymond* was simply unnecessary, since this Court had ruled that the state's safety interest was so slight as to pale in comparison with concomitant interstate commerce burdens. It would appear that examination of less restrictive legislative alternatives would be reached only where a court has determined that an asserted state interest is superior, or at least as compelling, as the burden imposed on interstate commerce.

⁸⁵ Appendix B, p. A-17, ¶16.

weight over the extended length of tandem-trailers reduce bridge stress and fatigue levels.⁸⁶ Consequently, a regulation which incorporates these engineering principles would *better* serve the purposes of the present regulation and would constitute a *lesser* burden on interstate commerce. Through adoption of so-called "bridge formulas" both federal and state legislatures have recognized the ameliorating effect which numbers of axles and the distance between axles have upon the gross load of a vehicle.⁸⁷ Similarly, §4.02 contains—in contradiction to the flat, gross weight requirements—a formula⁸⁸ which purportedly governs the gross weight for the unit of tractor and first semi-trailer. Such formulas directly address the public purpose of bridge preservation, while setting weight requirements which contemplate the individual physical characteristics of each trailer rig. Appellants submit that such weight formulas are by their very nature and operation less restrictive, and yet as effective, as flat, gross weight limitations.

6.

Whether, Consistent With Due Process Safeguards Against Vagueness Embodied in the Fourteenth Amendment, a Regulation Which Contains Conflicting Provisions Can Be Sustained.

This Court's standard regarding vagueness is well-settled. A criminal statute which either forbids or requires the doing of an act in terms so vague that persons of common intelligence must guess at its meaning lacks the first essential of due process of law. *Conally v. General Construction Co.*, 269 U.S. 385, 393 (1926); *Papachristo v. City of Jacksonville*, 405 U.S. 156, 162 (1972); *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). As the Supreme Judicial Court noted in its decision, a

⁸⁶ Appendix B, p. A-20, ¶25 and ¶26.

⁸⁷ See M.G.L. c. 90, §19A and 23 U.S.C. §127.

⁸⁸ Appendix I, p. A-50.

regulation whose violation is a criminal act is tested by a higher standard of definiteness than a non-criminal regulation. *Winters v. New York*, 333 U.S. 507, 515 (1948). A regulation so vague as to offend Due Process principles must be adjudged as void and unenforceable.

An examination of the language of the regulation at issue reveals impermissibly vague and ambiguous provisions. *Conally, supra*, 289 U.S. at 393. In one sentence of the first paragraph, 730 C.M.R. 4.02 sets forth a gross weight limitation of 127,400 pounds for tandem trailer units (i.e., weight of equipment, including tractor, two trailers and a dolly hitch, as well as payload). In addition, that paragraph specifies gross weight limitations for the unit of tractor and first semi-trailer 71,000 pounds, and for the unit of dolly and second semi-trailer, 58,400 pounds. This same section, however, in its second paragraph provides a second standard:

The maximum gross weight for the unit of tractor and first semi-trailer is governed by the formula—35,000 pounds plus 1000 pounds per foot between the center of the foremost axle of the tractor and the center of the rear-most axle of the first semi-trailer. (Emphasis added).

The strong and permissive language of the clause, "the maximum gross weight... is governed by the formula", creates great ambiguity as to the relationship between this gross weight standard and the gross weight limitations contained in the preceding sentences.

Moreover, a *third* standard for determining gross weight is found in the second paragraph of §4.02. The regulation states:

The gross load in a unit shall not exceed the sum of the allowable gross loads on the axles, which are as follows: maximum gross weight on one axle... 36,000 pounds. (Emphasis added).

Using this formula for "allowable gross loads", a "gross weight" for a particular vehicle could be achieved in excess of the two

previously cited limitations. There is no attempt within the regulation to integrate or reconcile these variant standards.

The Trial Court found that 730 C.M.R. 4.02 contained "three conflicting [gross weight] provisions"⁸⁹ but did not rule on Defendants' assertion that the challenged regulation was repugnant to state and federal due process safeguards, having found the regulation violates state and federal equal protection requirements. Review of the Trial Court's findings, in conjunction with analysis of the pertinent language of §4.02 strongly indicates an unconstitutional level of vagueness within the regulation.

In addressing Appellants' due process challenge, the Supreme Judicial Court simply pointed to one of the several conflicting gross weight provisions and found the language of *that particular clause* clear and unambiguous. This test fails to address the thrust of Appellants' challenge and the findings of the Trial Court. The conclusion of the Supreme Judicial Court could have been reached with respect to either of the two remaining conflicting provisions.

Although this Court has not previously addressed the narrow issue of vagueness created by conflicting and contradictory provisions, the regulation's effect on Defendants' due process rights is identical to the more typical vagueness challenge ordinarily brought before this Court.⁹⁰ Further, ambiguity and conflicting provisions are *not* endemic to this narrow area of regulation. On the contrary, precision of expression can and has been readily achieved in truck weight limitation statutes. Similar state and federal truck weight regulations have easily avoided the vagueness problems created in §4.02 by setting out an integrated series of individual provisos.⁹¹

⁸⁹ Appendix B, p. A-17, ¶15.

⁹⁰ In *Vietnam Veterans Against the War v. Morton*, 379 F. Supp. 9 (1974) the District Court invalidated for vagueness "overlapping, ill-defined and imprecise regulations." *Id.* at 14. (Emphasis added). Reversed on the grounds that the Supreme Court had approved a prior court order which had adequately delineated the regulation in question. 506 F.2d 53, 59 (1974).

⁹¹ See M.G.L. c. 90, §19A and 28 U.S.C. §127.

7.

Whether 730 C.M.R. 4.02 Violates the Fourteenth Amendment Due Process Requirement That a Law Be Substantially Related to the Public Purpose Sought To Be Attained.

Section 4.02 fails to meet this Court's standard of due process protection in that it is unreasonable and arbitrary, and the means selected (the flat, 127,400 pound gross weight limit) has no "real and substantial relation to the object sought to be attained." *Nebbia v. New York*, 291 U.S. 524, 525 (1933). The standard applied by this Court is similar to that applied with respect to equal protection safeguards in that both tests are concerned with arbitrariness and a demonstrable nexus between the restrictions imposed and the public purpose to be served.

Appellants' equal protection claim addresses the very question of the rationality of the gross weight limitation provided in §4.02, when analyzed in conjunction with the regulatory objective. That objective is to maintain a permissible level of stress and deterioration on the Turnpike's bridge structures and surfaces. The Supreme Judicial Court did not consider the rationality of §4.02 from this perspective, but instead dwelt upon the concept of mathematical precision. The findings of the Trial Court demonstrate that Appellants have raised much more than mathematical precision in showing the vast difference between established permissible levels of wear on the Turnpike's bridges and the weight limits assigned to tandem-trailers.

Conclusion

For the foregoing reasons, probable jurisdiction should be noted.

Respectfully submitted,

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Appendix A

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH

W-2891

COMMONWEALTH

v.

B&W TRANSPORTATION INC. & OTHERS.¹

ABRAMS, J. The Massachusetts Turnpike Authority (turnpike authority) has provided by regulation that a tandem tractor trailer,² using the Massachusetts Turnpike "may not exceed a total maximum gross weight of 127,400 pounds." 730 Code Mass. Regs. 4.02 (1978).³ The defendants are charged with operating their tandem tractor trailers at gross weights in excess of 127,400 pounds. At a hearing in the District Court, the defendants filed a motion to dismiss the complaints claiming that 730 Code Mass. Regs. 4.02 violated equal protection and due process guarantees as well as the commerce clause of the United States Constitution. After an extensive hearing, the judge concluded that the regulation was unconstitutional on equal protection grounds, and he dismissed the complaints.

¹ George Kyer Enterprises, Inc., and R.F.C. Transport, Inc.

² A tandem tractor trailer is a tractor and two trailers coupled together. A complete double tandem tractor trailer combination consists of a "truck tractor, first semi-trailer, dolly, and second semi-trailer". 730 Code Mass. Regs. 4.01 (1978).

³ The regulation was promulgated pursuant to the turnpike authority's power to "construct, maintain, repair, and operate" the turnpike. St. 1952, c. 354, as amended through St. 1980, c. 354, § 18.

The Commonwealth appealed, see Mass. R. Crim. P. 15(a)(1), 378 Mass. 882 (1979), and we granted the parties' joint application for direct appellate review. We reverse and remand the cases for trial.

We summarize the facts. The defendants are interstate common carriers, operating tandem trailer trucks. The Massachusetts Turnpike is the only State highway in Massachusetts on which tandem tractor trailers are allowed. But see Surface Transportation Assistance Act of 1982, Pub. L. No. 97-424, 51 U.S.L.W. 170 (March 23, 1983). For purposes of the motion, the parties stipulated that all the vehicles cited exceeded the regulation's gross weight limitations. The parties also stipulated that "[t]he primary purpose of the administrative regulations, pursuant to which the complaints issued, is to preserve the integrity and safety of bridges under the control" of the turnpike authority.⁴

In 1980, the turnpike authority amended its regulation, 730 Code Mass. Regs. 5.06, pertaining to single tractor trailer units by increasing the gross load allowance for units with four or more axles from 73,000 pounds to 80,000, and established a "reducible load" system, which enabled owners of vehicles with five or more axles to purchase a card annually authorizing them to carry 99,000 pounds. The regulation was amended in order to bring turnpike weight limitations for single tractor trailers in line with those established by the Department of Public Works for like vehicles on State roads.⁵ No proportionate increases were made for tandem tractor trailer units using the turnpike.

⁴ The Commonwealth did not contend that road surface or safety factors were more adversely affected by double tandem trailer trucks. These issues, therefore, are not before us.

⁵ The turnpike authority has been delegated authority by the Legislature to prohibit the operation on the turnpike of any motor vehicle that exceeds the gross weight limitations the authority established in its rules and regulations. However, the "authority shall not adopt or enforce any rule or regulation which prohibits any motor vehicle from traveling on the turnpike without a permit if said motor vehicle may travel on a public way of the

The judge found that in 1977 engineers for the New York State Thruway prepared a report on "Gross Weights and Axle Configurations for Tandem Operations." As a result of this report, the New York State Thruway concluded that it could safely increase the tandem tractor trailer gross weight limitation from 127,400 to 143,000 pounds. The New York study was based on a modification of the standard 1944 and 1953 American Association of State Highway Officials (AASHO) Specifications for Highway Bridges.

There are approximately 180 bridges maintained by the turnpike authority. The majority of the 180 bridges on the turnpike were constructed in the 1950's in conformity with the 1944 and 1953 AASHO's specifications. Five per cent of the bridges are long enough to allow an entire tandem tractor trailer on the bridge at one time. The judge concluded that since 95% of the turnpike bridges were less than 150 feet in length and thus would not need to support the entire length of the tandem tractor trailer on the bridge at once, the gross weight limit could be increased to 143,000 pounds in conformity with the 1977 AASHO specifications. The judge also concluded that regulation 4.02, restricting the gross weight of tandem tractor trailers to a maximum of 127,400 pounds was "without reasonable relation to the impact [of tandem trailers] on such bridges," and therefore the "complaints violate the equal protection provisions of the Federal and Massachusetts Constitutions."⁶

commonwealth, without a permit [under G.L. c. 90, § 19A], or... if said motor vehicle may travel on a public way of the commonwealth with a permit [under G.L. c. 85, § 30A]." St. 1979, c. 377, § 2. The judge found that in 1980 the Department of Public Works had increased the weight limits for single tractor trailer units to 99,000 pounds, on highways it was responsible for maintaining. Further, the judge found that the turnpike authority against the recommendations of its chief engineer and its consulting engineering firm, correspondingly increased its maximum permissible load for single tractor trailer units operated by holders of special permits, in order to be consistent with Department of Public Works regulations.

⁶ The parties do not suggest that on this issue there is a significant difference between the relevant provisions of the two Constitutions. Thus, we do not discuss the State Constitution separately. See *Blue Hills Cemetery, Inc. v. Board of Registration in Embalming & Funeral Directing*, 379 Mass. 368, 373 n.8 (1979).

1. *Equal protection challenge to 730 Code Mass. Regs. 4.02.* At the hearing, the defendants offered evidence that on many turnpike bridges a single tractor trailer unit with five or more axles, loaded to the gross 99,000 pound limit, creates stress on significantly more turnpike bridges in excess of that allowed under the tandem tractor trailer gross weight and axle weight limitations. The Commonwealth, however, offered evidence that at least as to one long-span bridge, the 99,000 pound permit vehicle overstressed that bridge by 5%, and that the tandem tractor trailer, with a gross weight of 127,400 pounds, overstressed that bridge by 9%. Experts for the Commonwealth believed that increasing the gross weight limit for tandem tractor trailers using the turnpike would adversely affect long-span bridges. Further, high axle loads, such as a 99,000 pound permit vehicle, primarily damage bridge decks or the pavement over a bridge, while high gross weights could damage the bridge supports. There was evidence that, from an engineering standpoint, the greater weight of the tandems induces more stress in long-span bridges, and therefore it was rational to differentiate between the gross weight limit on single and tandem trailers.

Nevertheless, the judge found that 95% of the bridges on the turnpike would fall well within the acceptable range of stress even if tandems were permitted to increase their maximum gross weights to 143,000 pounds. Therefore, he concluded that regulation 4.02, limiting tandem trailers' maximum gross weight to 127,400 pounds, did not bear a reasonable relation to the impact on the turnpike bridges. We do not agree.

We start with the fundamental principle that regulations promulgated pursuant to statutory authority have a presumption of constitutionality, see *Consolidated Cigar Corp. v. Department of Pub. Health*, 372 Mass. 844, 851 (1977), and are treated by the court with the same deference as a statutory enactment, *Massachusetts State Pharmaceutical Ass'n v. Rate*

Setting Comm'n, 387 Mass. 122, 127 (1982); *Greenleaf Fin. Co. v. Small Loans Regulatory Bd.*, 377 Mass. 282, 293 (1979). Further, in ruling on the defendants' equal protection claim, our duty is to determine "whether the classification made by the regulation rationally furthers a legitimate State purpose." *Commonwealth v. Petralia*, 372 Mass. 452, 455 (1977). "The weight of the evidence [is] for the [agency] not the courts." *Shell Oil Co. v. Revere*, Mass. Adv. Sh. (1981) 1285, 1292. "Although persons challenging the constitutionality of [the regulation] may introduce evidence in support of their claim that the [classification] is irrational, . . . they will not prevail if 'the question [of the classification's rationality] is at least debatable' in view of the evidence [before the judge]." *Id.* at 1291, quoting *United States v. Carolene Prods. Co.*, 304 U.S. 144, 153-154 (1938). See *Zayre Corp. v. Attorney Gen.*, 372 Mass. 423, 432 (1977).

Since the Commonwealth offered some evidence in support of its regulation, it was at least debatable whether tandem units with gross weights in excess of 127,400 pounds place excessive stress on the turnpike's long-span bridges. Because the issue was "at least debatable," the classification between single and tandem tractor trailers is not unconstitutional by reason of violating equal protection principles. "[I]t is only the invidious discrimination, the *wholly* arbitrary act, which cannot stand consistently with the Fourteenth Amendment." *Klein v. Catalano*, 386 Mass. 701, 717 (1982), quoting *New Orleans v. Dukes*, 427 U.S. 297, 303-304 (1976). "[R]ough accommodations that to some extent result in dissimilarity of treatment" are permissible unless the classifications are arbitrary or irrational. *Commonwealth v. Henry's Drywall Co.*, 366 Mass. 539, 545 (1974). "Whether [the regulation is] wise or effective is not, of course, the province of [courts]." *Klein v. Catalano*, *supra* at 707, quoting *Hoffman Estates v. Flipside Hoffman Estates, Inc.*, 102 S. Ct. 1186, 1196 (1982). *Commonwealth v. Lammi*, 386 Mass. 299, 300 (1982). Since the turnpike auth-

ority's regulation is supported by evidence that it preserves the safety and integrity of the turnpike bridges, the regulation bears a reasonable relation to its goal, and the defendants' equal protection claim fails. *Grocery Mfrs. of America, Inc. v. Department of Pub. Health*, 379 Mass. 70, 85 (1979).

2. *Due process claim.* The defendants assert that the 127,400 gross weight limitation is "without logic or rationality." The defendants also claim that axle weight limitations would be the "least restrictive means" and therefore a more appropriate weight regulation. They claim that axle weight limitations would be equally effective in preserving the turnpike bridges. The defendants also assert that the regulation is unconstitutionally vague.

In order to survive a due process challenge, the purpose of 730 Code Mass. Regs. 4.02 "must be rationally related to the promotion of public safety . . . [and] the means chosen to effectuate the legislative purpose must be reasonable." *Consolidated Cigar Corp. v. Department of Pub. Health*, 372 Mass. 844, 851 (1977). *Shell Oil Co. v. Revere*, Mass. Adv. Sh. (1981) 1285, 1289. *Commonwealth v. Henry's Drywall Co.*, 366 Mass. 539, 543 (1974). Contrary to the defendants' assertions, the Commonwealth has demonstrated that the regulation is not arbitrary but is rationally related to the purpose of preventing excessive stress on the turnpike's long-span bridges. The fact that the tandem gross weight limitation is not drawn with "mathematical precision," or that a better means of protection might be available or that the regulation "is not perfectly consistent with the desired result" is not fatal. *Shell Oil Co. v. Revere*, *supra* at 1290. The turnpike authority need not guarantee success when it chooses to regulate for the public safety. *Id.*

The defendants also argue that regulation 4.02 violates due process principles because the axle weight limitations contained within the regulation are the "least restrictive means" to achieve the purposes of the regulation, and that these axle

weight limitations would be equally effective in advancing the object of preserving the turnpike bridges. Since we have concluded that the Commonwealth has shown the "necessary nexus" between the regulation and its avowed purpose of preserving turnpike bridge integrity, see *Blue Hills Cemetery, Inc. v. Board of Registration in Embalming & Funeral Directing*, 379 Mass. 368, 375 n.11 (1979), the turnpike authority has met its burden. The resolution of conflicting evidence is for the turnpike authority, not the courts. *Borden, Inc. v. Commissioner of Pub. Health*, ante, , (1983). Courts do not substitute their judgment for that of the agency nor do they assess the effectiveness of alternative means. *Blue Hills Cemetery, Inc. v. Board of Registration in Embalming & Funeral Directing*, supra at 375.

Finally, the defendants assert that regulation 4.02 is unreasonably vague because it contains a gross weight limitation, a formula limiting weight of the tractor and first trailer unit, and an axle weight limitation. We assume that a "regulation whose violation is a criminal act is tested by a higher standard of definiteness than a noncriminal regulation." *Grocery Mfrs. of America, Inc. v. Department of Pub. Health*, 379 Mass. 70, 83 (1979). "[C]riminal conduct must be delineated with a reasonable degree of definiteness. . . [so that] those who may be subject to its penalties should not be forced to guess at its meaning." *Opinion of the Justices*, 378 Mass. 822, 827 (1979). A criminal statute will be treated as void for vagueness if it "fails to give a person of ordinary intelligence fair notice that his contemplated action is forbidden." *Grocery Mfrs. of America, Inc. v. Department of Pub. Health*, supra at 84.

Every tandem tractor trailer owner and operator is clearly put on notice that "[a]ny such combinations of vehicles may not exceed a total maximum gross weight of 127,400 pounds." 730 Code Mass. Regs. 4.02. The regulation is very clear that trucks with gross weights in excess of the 127,400 pound limitation are forbidden. Therefore, we conclude that regulation 4.02 is not unconstitutionally vague.

3. *The restraints of the commerce clause.* The defendants argue that regulation 4.02 violates the commerce clause of the United States Constitution. U.S. Const. art. 1, § 8, cl. 3. The defendants do not dispute that the Commonwealth has a legitimate interest in regulating truck weights to foster highway safety by preserving bridge and road surface structures. Nor do they contend that Federal legislation has preempted the Commonwealth's regulation of State tandem tractor trailer weights.⁷ Rather, the companies argue that the regulation excessively burdens interstate commerce in relation to the asserted local benefits. *Raymond Motor Transp., Inc. v. Rice*, 434 U.S. 429, 442 (1978). The companies contend that the Commonwealth's evidence did not show that the regulation contributed to highway safety but, rather, that the companies demonstrated that the regulation would impose a substantial burden on interstate commerce in terms of expense and delay. We do not agree.

While the commerce clause, even without congressional action, is a limitation on State power, and "prevents the States from erecting barriers to the free flow of interstate commerce," *Raymond Motor Transp., Inc. v. Rice*, 434 U.S. 429, 440 (1978), it does not invalidate all State restrictions on commerce. *Kassel v. Consolidated Freightways Corp. of Del.*, 450 U.S. 662, 669 (1981). "[I]n the absence of conflicting legislation by Congress, there is a residuum of power in the state to make laws governing matters of local concern which nevertheless in some measure affect interstate commerce." *Southern Pac. Co. v. Arizona*, 325 U.S. 761, 767 (1945).

The State's power to regulate commerce is the greatest when it regulates matters traditionally considered to be of local con-

⁷ The defendants do not argue that the Commonwealth is preempted from acting because Federal legislation precludes State regulation of truck weight limitations or that Federal legislation prohibits the weight limitations in regulation 4.02. See, e.g., *Southern Pac. Co. v. Arizona*, 325 U.S. 761, 766 (1945); *Grocery Mfrs. of America, Inc. v. Department of Pub. Health*, 379 Mass. 70, 80-81 (1979).

cern. *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 350 (1977). "[R]egulations that touch upon safety—especially highway safety—are those that 'the Court has been most reluctant to invalidate.'" *Kassel v. Consolidated Freightways Corp. of Del.*, 450 U.S. 662, 670 (1981), quoting *Raymond Motor Transp., Inc. v. Rice*, 434 U.S. 429, 443 (1978).⁸ See *South Carolina State Highway Dep't v. Barnwell Bros.*, 303 U.S. 177, 187 (1938).

Since there is no dispute that regulation of truck weights to promote highway safety is a legitimate State interest, we examine 730 Code Mass. Regs. 4.02 to determine whether it is a safety regulation designed to "effectuate a legitimate local public interest," and whether it imposes an impermissible burden on interstate commerce. *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970). See *Kassel v. Consolidated Freightways Corp. of Del.*, 450 U.S. 662, 670-671 (1981). The "regulation does not discriminate between in-State and out-of-State businesses." *Grocery Mfrs. of America, Inc. v. Department of Pub. Health*, 379 Mass. 70, 80 (1979). *Raymond Motor Transp., Inc. v. Rice*, 434 U.S. 429, 444 n.18 (1978). Unlike Iowa in *Kassel*, and Wisconsin in *Raymond*, the Commonwealth has presented expert evidence that tandem tractor trailers weighing in excess of 127,400 pounds place excessive stress on long-span turnpike bridges. *Kassel v. Consolidated Freightways Corp. of Del.*, *supra* at 671. *Raymond Motor Transp., Inc. v. Rice*, *supra* at 444-445.

Moreover, while at the time the complaints were issued against the defendants, New York allowed tandem tractor trailers with gross weights of 143,000 pounds to operate on the New York State thruway, evidence before the District Court

⁸ The United States Supreme Court has discussed highway safety in the context of safe operation of trucks to prevent accidents or hazardous driving conditions but not in the context of bridge stress or road surface deterioration. See *Kassel v. Consolidated Freightways Corp. of Del.*, 450 U.S. 662, 671-674 (1981); *Raymond Motor Transp., Inc. v. Rice*, 434 U.S. 429, 436-438 (1978); *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520, 524-526 (1959).

showed that Maine, Connecticut, New Jersey, and Pennsylvania did not allow any tandem tractor trailers to operate on their highways or turnpikes.⁹ Thus, the Commonwealth is not "out-of-step" with surrounding States. Cf. *Kassel, supra* at 675-678. Finally, at the time of these violations, there was no conflict between 730 Code Mass. Regs. 4.02 (1978) and Federal standards. Cf. Surface Transportation Assistance Act of 1982, Pub. L. No. 97-424, 51 U.S.L.W. 170 (March 23, 1983).

The only possible burden on interstate commerce raised by the defendants is that Massachusetts requires tandem tractor trailers to operate with a lower weight on its turnpike than New York authorizes on its Thruway. This difference results in some increase in expense and time only if tandem trailers operating exclusively between New York and Massachusetts choose to carry the 143,000 pound weight permitted by New York, rather than the 127,400 pound weight permitted by Massachusetts, and must be separated into single trailers or otherwise reloaded to conform to Massachusetts weight limitations. While increased time and expense are factors to be considered in determining the extent of a regulation's burden on interstate commerce, *Raymond Motor Transp., Inc. v. Rice*, 434 U.S. 429, 445 (1978), the defendants failed to show that such costs or delays were a significant burden on interstate commerce.¹⁰ Cf. *Grocery Mfrs. of America, Inc. v. Department of Pub. Health*, 379 Mass. 70 (1979); *Kassel v. Consolidated Freightways Corp. of Del.*, 450 U.S. 662 (1981). On the record, there is no showing that the regulation discriminates against or substantially burdens interstate commerce.

⁹ In his dissent in *Kassel*, Justice Rehnquist stated that tandem trailers were also prohibited in Maine, New Hampshire, and Vermont. *Kassel v. Consolidated Freightways Corp. of Del.*, 450 U.S. 662, 688 n.1 (1981).

¹⁰ The only finding on expense made by the judge was that double tandem trailers use less fuel and driver's time than single tractor trailers. The president of one of the defendant companies testified that his calculation showed that it costs an extra \$286 on one particular route to break a 143,000 pound tandem tractor trailer down into two singles in Massachusetts.

Consequently, we hold that the 730 Code Mass. Regs. 4.02 does not violate equal protection, due process, or the commerce clause principles. We vacate the order dismissing the complaints against the defendants and remand the cases for trial.

So ordered.

COMMONWEALTH OF MASSACHUSETTS.
SUPREME JUDICIAL COURT FOR THE COMMONWEALTH,
AT BOSTON,

April 15, 1983.

IN THE CASE NO. SJC-2891

COMMONWEALTH
v.

B&W TRANSPORTATION INC. & OTHERS

pending in the District Court Department of the Trial Court
for the County of Worcester, Worcester Division

No. 765-A-E; 00475 A-E; 7649-E

ORDERED, that the following entry be made in the docket;
viz.,—

The order dismissing the complaints against the defendants is vacated and the cases are remanded for trial.

BY THE COURT,
(s) PATRICK J. HURLEY, *Clerk.*

April 15, 1983

See opinion on file

Appendix B

COMMONWEALTH OF MASSACHUSETTS
DISTRICT COURT DEPARTMENT
WORCESTER DIVISION

WORCESTER, SS.

No. 765 A-E
00475 A-E
7649-E

COMMONWEALTH OF MASSACHUSETTS

v.

B&W TRANSPORTATION, INC.
GEORGE KYER ENTERPRISES, INC.
R.F.C. TRANSPORT, INC., ET AL.

MEMORANDUM OF DECISION

I. Preliminary Matters

1. All of the defendants, interstate trucking companies, received various citations alleging violation of 730 C.M.R. 4.02 (provisions governing the operation of tandem-trailer combinations) in 1981. Upon motion of the defendants and after obtaining the consent of the respective district attorneys involved, the cases were transferred to the jury session of the Worcester Division of the District Court Department at Worcester for trial. After a determination that all of the complaints presented common issues with respect to each of the defendants, the court allowed a motion pursuant to M.R.Cr.P. 9(a) and agreed upon by the parties, to conduct an evidentiary hearing, jury waived, on all of the consolidated complaints.

2. The evidentiary hearing consumed four days of testimony, including three consultant engineers, the chief engineer of the Massachusetts Turnpike Authority, the admission of numerous codes and relevant specifications, all of which are part of the record and essential to a just determination of the issues involved.

3. For purposes of these findings of fact, the parties stipulated at the outset to the following:

a) All of the tandem-trailer vehicles were properly stopped and checked for compliance with M.T.A. overweight regulations.

b) The rights of the owners and operators to procedures pursuant to M.G.L. Ch. 90C, S. 1 and 2 were fully protected.

c) The weights recorded on the various citations and complaints were overweight in accordance with existing regulations.

d) Each of the Massachusetts State Police officers in question was certified in accordance with law to make the determinations.

e) The scales utilized were certified in accordance with proper standards at the time of occurrence.

f) The primary purpose of the administrative regulations, pursuant to which the complaints issued, is to preserve the integrity and safety of bridges existing and under the control of the M.T.A.

II. *Findings of Fact*

1. Defendants are all common carriers operating tandem (sometimes referred to as "doubles") trailers interstate from the New York Thruway to Massachusetts on a route beginning at the 0.6-mile marker near Route #102 on the western Massachusetts-New York border to the Newton-Weston exit, a distance of approximately 120 miles. At three distinct areas, Westfield, Millbury-Grafton, and Newton-Weston the M.T.A. has provided large areas for the tandems to be separated for further single carriage to off-Turnpike destinations. The Department of Public Works has no regulatory provision allowing tandem operation on highways within its jurisdiction adjoining the Turnpike.

2. Each of the defendants uses a two or three-axle tractor which pulls a single-axle trailer (or in some cases, a double-axle trailer) to which an axled dolly and a second trailer are attached. (This trailer and dolly may have either single or double axles.) These units have been used on the highways for many years and are built in accordance with industry standards.¹

3. A double can carry a greater volume of general commodities than a single, often without exceeding legal limits on gross weights. Thus, fewer doubles than singles are needed to carry a given amount of cargo with consequent savings in fuel and driver's time. Most doubles carry two drivers, who separate when the tandem is bisected for operation off the Turnpike. In addition, because the trailers of a double can be routed separately, cargo can be picked up from various shippers, dispatched and delivered to various destinations more efficiently by use of doubles than singles.

4. Because of these advantages, the defendants would prefer to use doubles on route over the Turnpike between the Massachusetts-New York border and the Newton-Weston exit.

5. All drivers of tandem-trailer units must have attained age 25 and an experiential level satisfactory to the Authority wherein they principally reside prior to registration. Pursuant to 730 C.M.R. 4.17, special identification cards are issued to, and must be carried by all registered drivers. The M.T.A. grants reciprocity to all registrants meeting requirements of the New York State Thruway Authority.

6. Massachusetts Turnpike Regulations, however, restrict any such combinations of vehicles to not exceed a total maximum gross weight of 127,400 lbs. Additionally, there are axle weight limitations of 22,400 lbs. on any one axle and 36,000 lbs. on any two successive axles within 10 feet of one another.

¹ For a complete description of commercial vehicle types as designated by Code on axle arrangement, a copy of page 54 of the 1974 Overload Report of the Massachusetts D.P.W. (joint Exhibit No. 2) is attached hereto as Appendix A and B.

There is also a limitation known as a "Bridge Formula" tying in the length of the vehicle to maximum weight. The gross weight limit of 127,400 lbs. and a specific gross weight limit of 71,000 lbs. on the first tractor trailer unit under these provisions requires a minimum axle spacing of 92 feet. It is measured between the center of the foremost axle of the tractor and the outer of the rearmost axle of the rearmost semi-trailer. If the axle spacing is less, the permissible gross weight will be correspondingly reduced. All trailers are equipped with track mechanisms which allow movement of the axles within certain perimeters of the trailer length.

7. Defendants represented in these cases are those whose vehicles have axle distances which would allow, in accordance with the stated formula, gross weights in excess of 71,000 lbs.,² are provided with a regulatory right to haul such weights as are within the confines of the formula. In each of these cases defendants utilize various types and sizes of vehicles, some of which have measurements as set forth in the appendix of this opinion as Exhibits #1 and #2.

8. These limitations were developed in studies conducted by the New York State Thruway and were adopted by the M.T.A. circa 1953. In February of 1977 the Department of Engineering Maintenance for the New York State Thruway prepared a report referred to as "The Report on Gross Weights and Axle Configurations for Tandem Operations." (See Joint Exhibit #2.)

9. The purpose of this report was to examine the current Thruway regulations for tandem trailer combinations with regard to gross weight and axle configurations as related to the "Bridge Loading Formula," and to investigate the effects of a proposed increase in maximum gross weights above the then gross weight limit of 127,400 lbs.

² After setting forth a gross weight limitation of 127,400 lbs. and a specific gross weight of 71,000 lbs. for the unit of the tractor and first semi-trailer, 730 C.M.R. 4.02 provides for a maximum gross weight for the unit of tractor and first semi-trailer of 35,000 lbs., plus 1,000 lbs. per foot between the centers of the axles most distant from one another.

10. A computer analysis of Thruway bridge structures for various tandem-trailer combinations showed that the maximum gross weight could be increased to 143,000 lbs. from the 127,400 limit with no detrimental effect to the Thruway pavement or structures. Subsequently to the filing of the report, the New York Thruway adopted the increased limit of 143,000 lbs. subject to the limitations noted on Page 12 of "The Report."

11. The Turnpike Authority declined to modify its regulation with regard to tandems. In 1974 the Commonwealth, through its Department of Public Works, completed an "Overlord Report" (Joint Exhibit #2) which recommended that its bridges and pavements could safely accommodate an increase in statutory loads of one-sixth or 17% without gross adverse effect on the structures. However, the Department applied this increase by use of an annual per vehicle permit system with the applicant responsible for investigating a route's capacity, particularly its bridges, to withstand this increased load. It also recommended that this permit policy apply for a limited five-year period to assist in lessening the impact of the energy crisis.

12. By 1980, the sixth year after implementation, the Department of Public Works had increased the requirements by special permit for single tractor (or semi-tractor trailers) units from 73,000 lbs. to 99,000 lbs.

13. The M.T.A., pursuant to C.M.R. 5.06 (*See Special Provisions Governing the Issuance of Special Hauling Permits*), began in January of 1978 to allow, by special permit, single tractor units to increase loads to 73,000 lbs. In 1980 the M.T.A. Board, acting against the recommendations of its consulting engineering firm and its Chief Engineer, decided to increase its maximum permissible loads for single tractor-trailers by special permit to 99,000 lbs. in order to be consistent with the Department of Public Works regulations. It did not, however, allow a proportionate increase for gross load or axle weight loads pertaining to tandem-trailers.

14. Specifically, single tractor-trailer combinations with five or more axles, which had been limited to a gross weight of 80,000 lbs., were, by the amendment, permitted to carry a gross weight of 99,000 lbs., provided that the vehicle owner, or lessee obtained from the Authority a "reducible load card." Under the amendment no special modification or special equipment design, which might guarantee a certain distribution of load so as to prevent against increased deterioration of bridges, was required of the owners.

15. Comparison of the tandem-trailer provisions with those of 730 C.M.R. 5.04(4)(d)(10) reveals that vehicle combinations (under the latter section) with four or more axles are allowed a gross weight of 80,000 lbs. (up to 99,000 lbs. by special permit), while the comparable tractor and first trailer unit of a tandem vehicle (under one of the three conflicting provisions of 730 C.M.R. 4.02) is allowed a gross weight of only 71,000 lbs.

16. Axle loads or axle weight limitations bear a direct relationship, from an engineering standpoint, to bridge deterioration.³ There are no limitations governing axle weights for single tractor-trailer combinations, which are allowed to carry a gross weight of 99,000 lbs. by special permit (730 C.M.R. 5.06(3)).

17. As of December 31, 1980 913 permits were granted pursuant to the reducible load policy and practice of the M.T.A. As of June 1, 1981, 1,073 permits have issued.⁴ An examination of these permits (Exhibit #10) reveals that single tractor-trailer units hauling as much as 139,000 lbs.⁵ have been granted authority to operate pursuant to overweight permit regulations.

³ See pages 3, 4, 5, and 12 of the New York State Thruway Report (Exhibit #1).

⁴ No evidence was available, which would reflect the number of trips which each permit vehicle made during the course of a year under authority of these permits.

⁵ The permit did require that the semi-trailer combination shall have not less than six axles and twenty-two wheels. Although not required by regulation 730 C.M.R. 5.06(3), the M.T.A., in some cases, has made this conditional upon granting of the permit.

18. From Route 102 (close to the New York border) at the 0.6 mile marker of the Massachusetts Turnpike to the MDC Aqueduct east of Route 128 at the 123.1 mile marker, there are over 180 bridges maintained and under the supervision of the M.T.A. These bridges, for the most part, span areas beneath which lesser highways flow in different directions. Some are bridges which provide off-on ramp access to vehicular traffic. Approximately 5% of these bridges span some body of water, or span space beneath which culvert cells are constructed.

19. The total distance of each bridge span varies widely, but they can be broken down to approximations as follows:

(a) Approximately 45 of the 180 bridges are single simple-span types covering a distance as short as 35 feet to as long as 145 feet.* The majority of these bridges falls within the 60' range.

(b) Only 10 of the 180 bridges are constructed as two separate, but continuous spans encompassing a total distance of approximately 150 feet.

(c) Approximately 107 of the 180 bridges are either three or four continuous span bridges with lengths that vary widely. (The average span of each is less than 100 feet.)

(d) Eight of the 180 bridges have five or more continuous spans and are either 2x3 or 3x2 simple or continuous bridges.

20. A majority of the Turnpike bridges were constructed in the 1950's according to standards set forth in the American Association of State Highway Officials' (hereinafter referred to as AASHO) *Specification for Highway Bridges*. Various updated versions of AASHO Codes commencing in 1944, 1953 and 1977 are part of the record of this case. The 1953 AASHO Code is attached as Appendix (C) to this memorandum.

* The Gratton Street and Grandby Road Bridge, subject to a conflicting study presented by experts in their testimony, remains the longest single-span bridge along the turnpike.

21. In accordance with standards set forth on Page 10 of the Massachusetts Overload Report of 1974 (Joint Exhibit #2) a design truck test designated as HS20 was added to AASHTO specifications allowing, as of 1944, a total load of 36 tons, or 72,000 lbs. to a certain type of truck. The effect of this load on bridge overspans was measured by numerous test applications, all noted in a computer print-out analysis attached to the New York State Thruway Report. A second, or modified HS20 test,⁷ was developed for a model on the New York State Thruway. Test models for overstress in Massachusetts have been restricted to the original HS20, because the bridges were designed with respect to this mode.

22. The purpose of these tests was, inter alia, to determine the effect that truck loads would have on the stringers (girders of A-7 steel, which support the bridge deck itself). For each of the tandem truck trains analyzed in the New York State Thruway Report, maximum stress and moments (a mathematical term used to express allowable stress), including impact effects computed for bridge spans between 30' and 150' in length, were utilized. These values were then compared to the standard H20, HS20, and HS20 modified design live load stresses and expressed in terms of the percent of stress to which it is compared. The percent of overstress produced by each tandem combination investigated was computed for a maximum of A-7 structural steel working stress of 20,000 p.s.i. (lbs. per sq. inch).

23. The New York State Thruway report concluded that a 5% to 12% overstress for continuous load applications is within allowable design limits for roadway structures. Utilizing this standard, the New York State Thruway accepted, in 1977, an increase to 143,000 lbs. on 9-axle tandem-trailer vehicles as being within the allowable range.

⁷ The HS20-S16 Modified Truck Train test consists of two semi-trailer trucks traveling 30' feet apart. Each truck has a gross weight of 72,000 lbs. The gross weight is 144,000 lbs. The complete truck train varies from 86' to 118' in length to produce maximum stress in the structural element being analyzed.

24. Another engineering factor concerned with bridge deterioration is fatigue. Fatigue is the gradual weakening of structural steel by repeated applications of load. The range of stress is a change of stress from minimum to maximum (similar to the constant bending back and forth of a wire to breaking point). Fatigue is a relatively new concept, but has been incorporated into the AASHO standards. Until 1974, the AASHO specifications considered that only loadings which produce a range of stress from a tension member to a compression member (or vice versa) were critical in fatigue. More recently the range of *stress* (emphasis added) is considered the critical criteria for fatigue. The amount of fatigue cycles a bridge is designed for, depends on the type of roadway. A major highway, such as the Massachusetts Turnpike, with 2500 or more average daily truck traffic trips, will be designed for 2,000,000 cycles or more. The allowable range of stress is then determined in accordance with a table represented on page #11 of the Massachusetts DPW Overload Report (Joint Exhibit #2).

25. By application of the Overstress and Fatigue Standards described in paragraphs #21 thru #24 of these findings, to a test module utilizing a tandem-trailer loaded up to the 36,000-lb.-axle-weight limit (a gross weight of 150,870 lbs.) on the longest single-span bridge on the Turnpike,⁸ I find the range of stress and fatigue to be within the 1977 AASHO allowables and slightly less than that produced by a single (semi) tractor trailer loaded to the 99,000 lbs. limit.

26. This is due primarily to the increased amount of axles and better distribution of the gross weight carrying propensities of the tandems.

27. Less than 5% of the 180 bridges on the M.T.A. are of sufficient length to allow the entire body of a tandem-trailer to pass at one moment in time over their span.⁹ Over 55% of

⁸ The Gratton Street and Grandby Road Bridge of the M.T.A.

⁹ The testimony from three experts pertaining to whether a 13% to 15% overstress to a 120' to 150' span was within the allowable range under the AASHO Code, was inconclusive to support a factual finding by the court, but the importance of this is diminished by the factual finding above.

the bridges would allow the entire length of a single tractor trailer to pass at one moment in time over their individual spans. Since the paradigm test of bridge stress occurs when the entire length and weight are entirely supported by the individual bridge span, 95% of the bridges on the Turnpike would fall well within the allowable range of the 1977 AASHO Code with tandems loaded to a 143,000 lb. gross limit.

28. Pursuant to 730 C.M.R. 5.06(3), an owner or lessee of a single tractor-trailer unit with five or more axles, who has received a "reducible load permit" from the M.T.A., and who allows the unit to be loaded to the gross 99,000-lb.-weight limit, creates stress on significantly more Turnpike bridges in excess of that allowed under tandem-trailer gross weight and axle weight limitations.

RULINGS OF LAW

1. The Turnpike regulation in question, 730 C.M.R. 4.02 was promulgated pursuant to the Authority's powers and duties to construct, operate and maintain the Turnpike. G.L. Ch. 81, App. 1-3. The basis for promulgation of such weight regulation is to protect against undue deterioration of the system's bridge and road surfaces. Safety in the operation of such vehicles may also be considered. *Raymond Motors Transportation, Inc. v. Rice*, 434 U.S. 429 (1978).¹⁰

2. The 1980 amendment, 730 C.M.R. 5.06, adding a section allowing the operation of certain classes of trucks at a greater gross weight than previously had been provided was a valid exercise of legislative objectives by the Turnpike Authority. *Pinnick v. Cleary*, 360 Mass. 1 (1971).

3. However, as suggested in a concurring opinion (Ch. Justice Tauro) in *Pinnick*, where an issue is "novel or complex," a factual hearing to examine whether any legislative or regulatory classification scheme is rational, is a necessary corollary to follow.

¹⁰ The M.T.A. did not contend that road surface or safety factors were more adversely affected as between singles and doubles.

4. Upon the facts as found in these cases, I rule that once having allowed by amendment in 1980, C.M.R. 5.06, an increase for single tractor trailers to 99,000 lbs., the M.T.A. had no proper legislative or objective criterion for excluding owners of tandem-trailers from the benefits of a similar treatment.

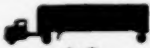
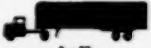
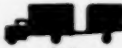
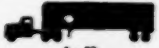
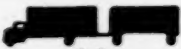
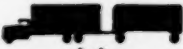
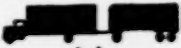
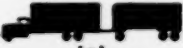
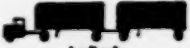
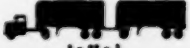
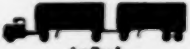
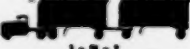
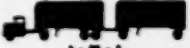
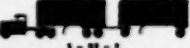
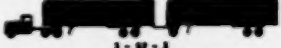

5. Since the legitimate public purpose sought to be achieved by such truck weight limitations is the preservation of bridges and their surfaces, regulations which classify and restrict various types of vehicles arbitrarily (as the factual findings demonstrate) and without reasonable relation to the impact on such bridges, I rule that these complaints violate the equal protection provisions of the Federal and Massachusetts constitutions. *J. H. McLeaish & Co. v. Binford*, 52 Fed. 151 (A31; *State v. Frick*, 150 Fla. 148; 7 So. 2d 152 (1942); *State v. Robart*, 83 Minn. 257, 86 N.W. 93 (1901); *Brown v. Nichols*, 93 Kan. 737, 145 P. 561 (1915).

6. Each of the complaints is to be dismissed with prejudice.

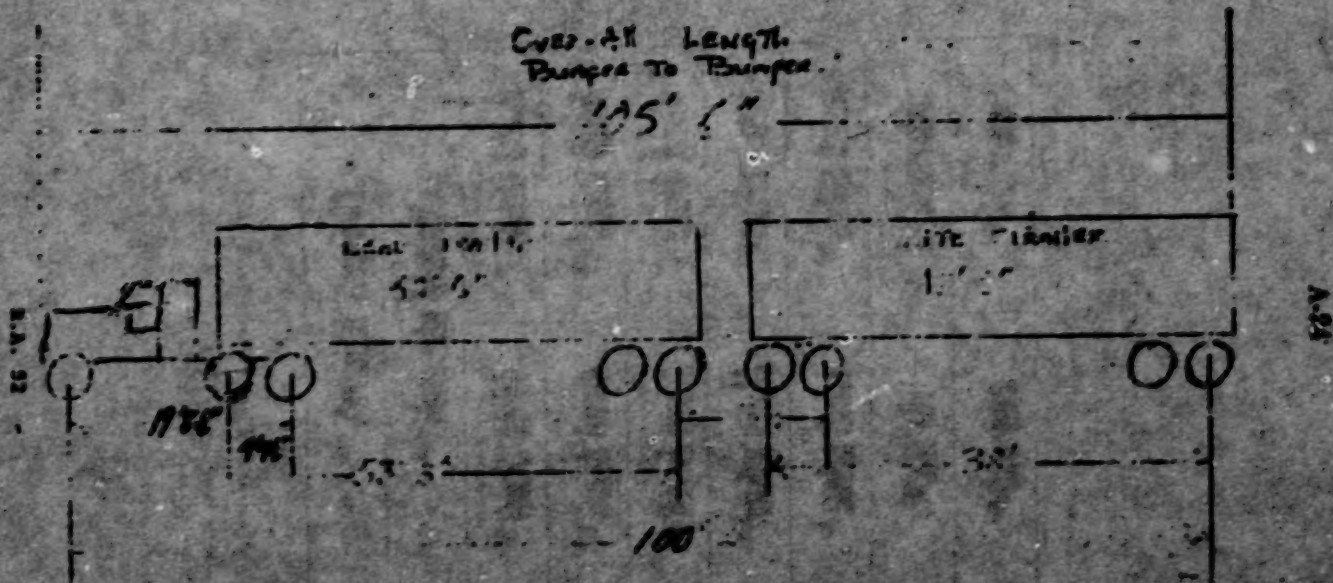
(s) MEL L. GREENBERG
MEL L. GREENBERG, *Justice*

Date: July 23, 1981

COMMERCIAL VEHICLE TYPES AS DESIGNATED BY CODE BASED ON AXLE ARRANGEMENT

 2-0	 2-S2
 2-1	 3-S2
 2-2	 3-2
 2-3	 3-3
 2-S2-2	 3-S2-2
 2-S2-3	 3-S2-3
 2-S2-4	 3-S2-4
 3-S2-5	
 3-S2-6	

125' 1"



(1) Interior Stringers.

Interior stringers shall be designed for loads determined in accordance with the following table:

Kind of floor	One traffic lane, fraction of a wheel load to each stringer	Two or more traffic lanes, fraction of a wheel load to each stringer
Plank	$\frac{S}{4.0}$	$\frac{S}{2.75}$
Strip 4 inches in thickness, wood block on 4-inch plank subfloor or multi-thickness plank more than 5 inches thick	$\frac{S}{4.5}$	$\frac{S}{4.0}$
Strip 5 inches or more in thick- ness	$\frac{S}{5.0}$ If S exceeds 5.0 ft. see footnote *	$\frac{S}{4.25}$ If S exceeds 5.5 ft. see footnote *
Concrete	$\frac{S}{6.0}$ If S exceeds 6.0 ft. see footnote *	$\frac{S}{5.0}$ If S exceeds 10.5 ft. see footnote *
Steel grid (less than 4 inches thick)	$\frac{S}{4.5}$	$\frac{S}{4.0}$
Steel grid (4 inches or more)	$\frac{S}{6.0}$ If S exceeds 6.0 ft. see footnote *	$\frac{S}{5.5}$ If S exceeds 10.5 ft. see footnote *

S = average spacing of stringers in feet.

Splice and dovetail flooring shall have the same distribution as strip floors of equivalent thickness.

* In this case the load on each stringer shall be the reaction of the wheel loads, assuming the flooring between stringers to act as a simple beam.

(2) Outside Stringers.

The live load supported by outside stringers shall be the reaction of the truck wheels, assuming the flooring to act as a simple beam between stringers.

(3) Total Capacity of Stringers.

The combined load capacity of the beams in a panel shall not be less than the total live and dead load in the panel.

(c) Bending Moment in Floor Beams (Transverse).

In calculating bending moments in floor beams no transverse distribution of the wheel loads shall be assumed.

If longitudinal stringers are omitted and the floor is supported directly on floor beams, the beams shall be designed for loads determined in accordance with the following table:

Kind of Span	Factor
Plank	$\frac{S}{4}$
Strip 4 inches in thickness, wood blank on 4-inch plank sub-base or multi-thickness plank more than 5 inches thick	$\frac{S}{4.5}$
Strip 6 inches or more in thickness	$\frac{S^2}{6}$
Concrete	$\frac{S^2}{6}$
Steel grid (less than 4 inches thick)	$\frac{S}{4.5}$
Steel grid (4 inches or more)	$\frac{S^2}{6}$

Supporting of beams in feet.
Splice and dished flooring shall have the same distribution as strip floors of equivalent thickness.

* If S exceeds denominator, the load on the beam shall be the reaction of the wheel load assuming the flooring between beams to act as a simple beam.

3.3.2.—DISTRIBUTION OF LOADS AND DESIGN OF CONCRETE SLABS.*

(a) Span Lengths. (See also Article 3.7.4.)

For simple spans the span length shall be the distance center to center of supports but not to exceed clear span plus thickness of slab.

The following effective span lengths shall be used in calculating distribution of loads and bending moments for slab continuous over more than two supports:

Slabs monolithic with beam (without haunches), S = clear span.

Slabs supported on steel stringers, S = distance between edges of flanges plus $\frac{1}{2}$ of the stringer flange width.

Slabs supported on timber stringers, S = clear span plus $\frac{1}{2}$ thickness of stringer.

(b) Edge Distance of Wheel Load.

In designing slabs the center line of wheel load shall be assumed to be 1 foot from the face of the curb.

(c) Bending Moment.

Bending moment per foot width of slab shall be calculated according to methods given under Cases A, B and C.

*The slab distribution set forth herein is based substantially upon the "Wentershaw theory." The following references are furnished concerning the subject of slab design:

Public Roads, March, 1926, "Computation of Stresses in Bridge Slabs Due to Wheel Loads," by H. M. Wentershaw.

University of Illinois Bulletin No. 268, "Solutions for Certain Rectangular Slabs of Concrete Over Flexible Supports," by Vernon P. Jensen; Bulletin 264, "A Distribution Procedure for the Analysis of Slabs Continuous Over Flexible Beams," by Nathan Newmark; Bulletin 215, "Moments in Simple Span Bridge Slabs with Stiffened Edges," Vernon P. Jensen; and Bulletin 246, "Highway Slab Bridges with Curb: Laboratory Tests and Proposed Design Method."

1977
AASHTO

HIGHWAY BRIDGES

1.2.22

- $\beta_E = 1.3$ for lateral earth pressure and 0.5 for checking positive moments in rigid frames
 $\beta_E = 1.0$ for vertical earth pressure
 $\beta_D = 0.75$ when checking member for minimum axial load and maximum moment or maximum eccentricity
 $\beta_D = 1.0$ when checking member for maximum axial load and minimum moment
 $\beta_D = 1.0$ for flexural and tension members
 $\beta_E = 1.0$ Rigid Culverts
 $\beta_E = 1.67$ Flexible Culverts
- } for
Column.
Design

Section 3—DISTRIBUTION OF LOADS

1.3.1—DISTRIBUTION OF WHEEL LOADS TO STRINGERS
LONGITUDINAL BEAMS AND FLOOR BEAMS*

(A) Position of Loads for Shear

In calculating end shears and end reactions in transverse floor beams and longitudinal beams and stringers, no longitudinal distribution of the wheel load shall be assumed for the wheel or axle load adjacent to the end at which the stress is being determined.

Lateral distribution of the wheel load shall be that produced by assuming the flooring to act as a simple span between stringers or beams. For loads in other positions on the span, the distribution for shear shall be determined by the method prescribed for moment, except that the calculations of horizontal shear in rectangular timber beams shall be in accordance with Article 1.10.2.

(B) Bending Moment in Stringers and Longitudinal Beams**

In calculating bending moments in longitudinal beams or stringers, no longitudinal distribution of the wheel loads shall be assumed. The lateral distribution shall be determined as follows:

(1) Interior Stringers and Beams

The live load bending moment for each interior stringer shall be determined by applying to the stringer the fraction of a wheel load (both front and rear) determined in Table 1.3.1(B).

* Provisions in this Article shall not apply to orthotropic deck bridges.

** In view of the complexity of the theoretical analysis involved in the distribution of wheel loads to stringers, the empirical method herein described is authorized for the design

1.3.1

DESIGN

37

TABLE 1.3.1 (B)

Kind of Floor	Bridge designed for one traffic lane	Bridge designed for two or more traffic lanes
Timber:¹		
Plank	5/4.0 (5/1.219)	5/3.75 (5/1.143)
Strip 4" (101.6mm) thick or multiple layer floors over 5" (127mm) thick	5/4.5 (5/1.372)	5/4.0 (5/1.219)
Strip 6" (152.4mm) or more thick	5/5.0 (5/1.524) If S exceeds 5' (1.524m) use footnote ² .	5/4.25 (5/1.295) If S exceeds 6.5' (1.981m) use footnote ² .
Concrete:		
On Steel I-Beam Stringers ³ and Prestressed Concrete girders	5/7.0 (5/2.134) If S exceeds 10' (3.048m) use footnote ² .	5/5.5 (5/1.676) If S exceeds 14' (4.267m) use footnote ² .
On Concrete T-Beams	5/6.5 (5/1.981) If S exceeds 6' (1.829m) use footnote ² .	5/6.0 (5/1.829) If S exceeds 10' (3.048m) use footnote ² .
On Timber Stringers	5/6.0 (5/1.829) If S exceeds 6' (1.829m) use footnote ² .	5/5.0 (5/1.524) If S exceeds 10' (3.048m) use footnote ² .
Concrete box girders ⁴	5/8.0 (5/2.438) If S exceeds 12' (3.658m) use footnote ² .	5/7.0 (5/2.134) If S exceeds 16' (4.877m) use footnote ² .
On Steel Box Girders	[See Art. 1.7.49(B)]	
On Prestressed Concrete Spread Box Beams	[See Art. 1.6.24(A)]	
Steel grid:		
(less than 4" (101.6mm) thick)	5/4.5 (5/1.372)	5/4.0 (5/1.219)
4" (101.6mm) or more)	5/6.0 (5/1.829) If S exceeds 6.0' (1.829m) use footnote ² .	5/5.0 (5/1.524) If S exceeds 10.5' (3.200m) use footnote ² .

S=average stringer spacing in feet(m).

¹ Splined and dowelled timber flooring shall have the same distribution as strip floors of equivalent thickness.² In this case the load on each stringer shall be the reaction of the wheel loads, assuming the flooring between the stringers to act as a simple beam.³ "Design of I-Beam Bridges" by N. M. Newmark—Proceedings, ASCE, March 1948.⁴ (See Article 1.2.11) shall be utilized for interior and exterior box

APPENDIX C

SUPREME JUDICIAL COURT FOR THE COMMONWEALTH
ROOM 1412 COURT HOUSE

BOSTON, MASSACHUSETTS 02108
(617) 725-8055

PATRICK J. HURLEY
Clerk

FREDERICK J. QUINLAN
Assistant Clerk

April 29, 1983

H. Glenn Alberich, Esq.
Mahoney, Hawkes & Goldings
1 Walnut Street
Boston, Massachusetts 02108

Re: Commonwealth vs. B. & W. Transportation Inc.
SJC-2891 & others

Dear Mr. Alberich:

Your Petition for Rehearing in the above captioned case has
been considered by the court and is denied.

Very truly yours,
(s) PATRICK J. HURLEY, *Clerk*

c.c.: James Reardon, Spec. Asst. Dist. Atty.

APPENDIX D

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH

WORCESTER COUNTY

SITTING, 1983

No. 2891

COMMONWEALTH OF MASSACHUSETTS

PLAINTIFF-APPELLANT,

v.

B&W TRANSPORTATION, INC.,
GEORGE KYER ENTERPRISES, INC.,
and R.F.C. TRANSPORT, INC.,

DEFENDANTS-APPELLEES.

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that B&W Transportation, Inc., George Kyer Enterprises, Inc., and R.F.C. Transport, Inc., Appellees in the above-captioned matter, hereby appeal to the Supreme Court of the United States from the Order of this Court vacating the Order of the Trial Court which had dismissed the Complaints against Defendants.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

By their attorneys,

(s) H. GLENN ALBERICH

H. GLENN ALBERICH

MAHONEY, HAWKES & GOLDINGS

One Walnut Street

Boston, MA 02108

(617) 367-2900

RECEIVED
SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH
PATRICK J. HURLEY, CLERK
JULY 14, 1983

APPENDIX E

RECEIVED
JUL 15 1983
OFFICE OF THE CLERK
SUPREME COURT, U.S.

*In the
Supreme Court of the United States*

OCTOBER TERM, 1982

—
No.
—

B & W TRANSPORTATION, INC., GEORGE KYER
ENTERPRISES INC., and R.F.C. TRANSPORT, INC.,

APPELLANTS,

v.

COMMONWEALTH OF MASSACHUSETTS,

APPELLEE.
—

APPLICATION FOR EXTENSION OF TIME TO DOCKET CASE

To Mr. Justice Brennan:

Appellants, B & W Transportation, Inc., George Kyer Enterprises, Inc., and R.F.C. Transport, Inc. (hereinafter "Appellants") hereby apply for an extension of time to docket their case, *B & W Transportation, Inc., George Kyer Enterprises, Inc., and R.F.C. Transport, Inc. v. Commonwealth of Massachusetts*.

This Court's jurisdiction is invoked pursuant to 28 U.S.C. §1257(2). In vacating the Order of the Trial Court, which had dismissed certain consolidated Complaints against Appellants, The Supreme Judicial Court sustained the constitutionality under the Fourteenth Amendment and the Commerce Clause of 730 C.M.R. 4.02, a regulation governing the weights of tandem-trailer vehicles on the Massachusetts Turnpike. The Order of the Supreme Judicial Court was entered on April 15, 1983, and a copy of the Slip Opinion is attached as Appendix A. On April 25, 1983 Defendants timely filed a Petition for Rehearing, a copy of which is attached as Appendix B. Defendants' Petition was denied on April 29, 1983. A notice of appeal was filed in the Supreme Judicial Court on July 14, 1983 and a copy of the notice of appeal was filed in the Trial Court, the Worcester District Court, Worcester County—the court possessed of the record—on July 14, 1983, and is attached as Appendix C.

The ruling of the Trial Court dismissing the Complaints at issue as violative of state and federal equal protection safeguards (a copy of which is attached as Appendix D) resulted from a hearing on Appellants' (then Defendants') Motion For A Required Finding Of Not Guilty, Or, In The Alternative, Dismissal Of The Complaints. Consequently, the Supreme Judicial Court's Order vacating the Trial Court's Order also remanded the cases for trial. After receipt of the Supreme Judicial Court's decision, counsel for Appellants, H. Glenn Alberich, a member of this firm, renewed their Motion For A Required Finding Of Not Guilty, based upon the constitutional challenges already brought. Anticipating a denial of the Motion, counsel planned to seek direct review by the Supreme Judicial Court in order to effect final judgment with respect to these consolidated cases. However, upon analysis of Appellants' more recent tandem-trailer weight cases which had not been consolidated for trial, and after extensive research regarding finality of judgments for purposes of appeal pursuant to 28 U.S.C. §1257(2), counsel for Appellants eventually determined that the April 15, 1983 ruling of the Supreme Judicial Court had indeed been final for purposes of appeal under §1257(2). This finality results from stipulations made at the outset of the hearing in the Trial Court, as set forth on Pages 1 and 2 of Appendix D. In essence, Appellants have no other defense with respect to the consolidated cases at issue, and their procedural circumstances are in all pertinent respects the same as those considered by this Court in *Mills v. State of Alabama*, 384 U.S. 214, 217 (1966). See also *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 479 (1974). More than a month of Appellants' 90 day time period had elapsed in determining the appropriateness of their present appeal. Subsequently, counsel for Appellants was incapacitated for a period of several weeks, until July 6, 1983, by an intestinal infection. Appellants' counsel has also been engaged in numerous pre-trial, trial and appellate matters,

and his schedule has been particularly burdened as a result of the Commonwealth's recent efforts to dispose of numerous tandem-trailer weight cases, pending in various and distant jurisdictions, while resisting Appellants' efforts to transfer and join these cases. Counsel has been diligent in his efforts to draft a clear and thorough jurisdictional statement. An extension of thirty days would allow Appellants an opportunity to properly docket their case.

Respectfully submitted,

(s) MORRIS M. GOLDINGS
 MORRIS M. GOLDINGS
 MAHONEY, HAWKES & GOLDINGS
 H. GLENN ALBERICH
 One Walnut Street
 Boston, Massachusetts 02108
 (617) 367-2900

CERTIFICATE OF SERVICE

I, Morris M. Goldings, one of the attorneys for appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the Fifteenth day of July, 1983, I served a copy of the foregoing Application For Extension Of Time To Docket Case on the Commonwealth by mailing said copy, in a duly addressed envelope, with postage prepaid, to James G. Reardon, Esquire, Special Assistant District Attorney, 390 Main Street, Worcester, Massachusetts 01608.

(s) MORRIS M. GOLDINGS
 MORRIS M. GOLDINGS
Attorney for Appellant
 MAHONEY, HAWKES & GOLDINGS
 One Walnut Street
 Boston, Massachusetts 02108
 (617) 367-2900

A-34

APPENDIX F

In the
Supreme Court of the United States

No. A-29

B & W TRANSPORTATION, INC., ET AL.,
APPELLANTS,

v.

MASSACHUSETTS

ORDER

UPON CONSIDERATION of the application of counsel for the appellants,

IT IS ORDERED that the time for docketing an appeal in the above-entitled cause be, and the same is hereby extended to and including Aug. 27, 1983.

(s) BYRON R. WHITE
Associate Justice of the Supreme
Court of the United States

Dated this 18th day of July, 1983

APPENDIX G

MAHONEY, HAWKES & GOLDINGS
ATTORNEYS AND COUNSELLORS AT LAW
ONE WALNUT STREET
BOSTON, MASSACHUSETTS 02108
(617) 367-2900

HAND DELIVERED

April 25, 1983

The Honorable Edward F. Hennessey
Chief Justice
Supreme Judicial Court
New Courthouse
Pemberton Square
Boston, Massachusetts 02108

RE: Commonwealth v. B & W Transportation, Inc.
et al.
Supreme Judicial Court No. 2891

Dear Mr. Chief Justice:

This is a petition by Defendants-Appellees (hereinafter "Defendants") for rehearing of the above-referenced case pursuant to Rule 27, Mass. R.A.P. Specifically, Defendants request rehearing with regard to the Court's ruling on their equal protection claim, which ruling resulted in vacating the Order of the Trial Court dismissing the complaints against Defendants.

In its analysis of the Trial Court's Memorandum of Decision the Court made reference to evidence introduced by the Commonwealth that "from an engineering standpoint, the greater weight of the tandems induces more stress in long-span bridges" (Slip Opinion, p. 5) and then stated:

Nevertheless, the judge found that 95% of the bridges on the turnpike would fall well within the acceptable range of stress even if tandems were permitted to increase their maximum gross weights to 143,000 pounds. Therefore, he concluded that regulation 4.02, limiting tandem trailers' maximum gross weight to 127,000 pounds did not bear a reasonable relation to the impact on the turnpike bridges. (Slip Opinion, pp. 5-6)

Defendants respectfully submit that the Trial Court's conclusion regarding the irrationality of the gross weight provisions of 730 C.M.R. 4.02 was not based entirely — or even primarily — upon its finding that 95% of the bridges on the Turnpike "would fall *well within* the allowable range of the 1977 AASHO Code with tandems loaded to a 143,000 pound gross limit" (App. p. 48; emphasis added).*

Indeed, the findings of the Trial Court with respect to the impact of tandems on longer bridge spans were quite specific and were in direct opposition to the particular testimonial evidence referenced by this Court (App. pp. 46-48). Further, the Trial Court's findings on this issue were based upon substantial and compelling documentary evidence and testimony presented by Defendants (Report of the New York Thruway, Report of Mass. D.P.W. referenced at S. App. pp. 2, 9 and 10; testimony of Lawrence J. McCluskey, S. App. pp. 26-126). First, the Trial Court, in addressing directly the relative impact of tandems and single tractor trailers on the structural members of longer bridges, found:

By application of the Overstress and Fatigue Standards described in paragraphs #21 thru #24 of these findings, to a test module utilizing a tandem-trailer loaded up to... (a gross weight of 150,870 pounds) *on the longest single-span bridge on the Turnpike*, I find the range of stress

* "App." is a reference to the Commonwealth's Appendix, as distinguished from "S. App." which references Defendants' Supplemental Appendix.

and fatigue to be within the 1977 AASHO allowables and *slightly less* than that produced by a single (semi) *tractor trailer* loaded to the 99,000 pound limit.

(App. pp. 47-48; emphasis added).

This finding is key to a consideration of the impact of tandems on longer bridge spans in that it is based upon analysis of the Gratton Street Bridge (App. p. 48, n. 8) which is the longest single span bridge on the Turnpike (App. pp. 47-48) and, at a length of 145 feet (S. App. p. 74), is long enough to experience the full impact of a tandem trailer. Also, since it is a "single span" the bridge beams carry the full weight of vehicles without the assistance of supporting piers in the middle (S. App. p. 74). Having addressed this particular bridge the Trial Court found, on the basis of expert testimony presented by the Commonwealth as well as Defendants, that a tandem trailer loaded to a gross weight of 150,870 pounds — which far exceeds even 143,000 pound tandem loads allowed on the New York Thruway — still produced *less stress* and *fatigue* than a single tractor trailer loaded to its allowable 99,000 pound limit (App. pp. 47-48). Thus the Trial Court directly addressed the comparative stress of such vehicles on longer spans and found that tandems loaded 23,470 pounds beyond the Turnpike's present limit caused *less* harm to the structural members of longer bridges than currently allowed single trailer units.

Second, the Trial Court further found that the above-discussed stress and fatigue findings resulted from the tandem's "increased amount of axles and better distribution of the gross weight carrying propensities" (App. p. 48). In essence, as stated by Defendants' experts, the tandem's ability to distribute its load bears significantly on structural stress, as well as damage to bridge decks and road pavements. Third, the Court found, in accordance with expert testimony, that since only 5% of the bridges on the Turnpike system were long enough to hold, at one time, the entire body of a tandem, the remaining 95% of the bridges were, as shown by the statistics,

well within the allowable range when carrying tandems loaded to 143,000 pounds (App. p. 48, ¶27). While this Court appears to have viewed the findings of paragraph 27 as the foundation for the Trial Court's ruling on equal protection claims, Defendants respectfully submit that this particular finding simply removed from consideration, based upon expert analysis, the impact of tandems on shorter spans. Defendants' construction of this finding is further supported by the Trial Court's findings in paragraph 28:

Pursuant to 730 C.M.R. 5.06(3), an owner or lessee of a single tractor-trailer unit with five or more axles, who has received a "reducible load permit" from the M.T.A., and who allows the unit to be loaded to the gross 99,000 -lb.-weight limit, creates stress on significantly more Turnpike bridges in excess of that allowed under tandem-trailer gross weight and axle weight limitations. (App. p. 48)

In essence, the Trial Court found, again based upon expert analysis, that single tractor trailers loaded to their allowable 99,000 limit were creating stress to the many shorter Turnpike bridges in excess of any stress which a tandem could produce, since such shorter bridges only experience a portion of the tandem load.

Moreover, aside from the asserted misconstruction of the Trial Court's findings, Defendants respectfully submit that this Court's further reference to, and reliance upon a small portion of the Commonwealth's evidence (i.e., that tandems induce more stress on long-span bridges) itself deprives Defendants of due process and equal protection under applicable Massachusetts and federal constitutional provisions. This evidence by the Commonwealth was directly refuted by Defendants' expert witnesses. Further, the Trial Court, which was best situated to assess the expertise and credibility of witnesses testifying on both sides of this issue, made findings in direct contradiction to the testimony referenced by this Court

(App. pp. 47-48). Thus, by relying on such isolated evidence, the Court ruled in contravention of well-settled principles regarding the scope of appellate review as set forth on pages 37-40 of Defendants' brief. As a result, Defendants were entirely denied the overwhelming support of extensive factual findings which were made on the basis of a four-day evidentiary hearing. Since this decision departs from otherwise consistent state and federal appellate principles and practice with respect to review of trial findings, based upon the record, Defendants respectfully submit that the decision deprives them of requisite due process and equal protection safeguards. By so holding the Court has ruled, in essence, that in any case where the Commonwealth can present evidence — regardless of its integrity or veracity — supporting the rationality of a law, any constitutional challenge based upon equal protection or due process principles must fail. Such a result is in conflict with cases cited by the Commonwealth and Defendants, particularly recent state cases addressing the constitutionality of truck weight laws. *State v. Amyot*, 119 N.H. 671, 407 A.2d 812 (1979); *Sterling H. Nelson & Sons, Inc. v. Bender*, 95 Idaho 813, 520 P.2d 860 (1974); *Dilworth v. State*, 204 Tenn. 522, 322 S.W. 2d 219 (1959).

On the basis of the foregoing, Defendants request rehearing with respect to the Court's ruling vacating the Order of the Trial Court.

Respectfully submitted,

H. Glenn Alberich
MAHONEY, HAWKES & GOLDINGS
One Walnut Street
Boston, Massachusetts 02108
(617)367-2900

HGA:dmc

APPENDIX H

MASSACHUSETTS GENERAL LAWS

APPENDIX TO CHAPTER 81

MASSACHUSETTS TURNPIKE

§ 1-1 Turnpike Authority empowered to construct, maintain and repair. The Massachusetts Turnpike Authority (hereinafter created) is hereby authorized and empowered, subject to the provisions of this act, to construct, maintain, repair and operate at such location as may be approved by the state department of public works a toll express highway, to be known as the "Massachusetts Turnpike", from a point in the vicinity of the city of Boston or from a point or points within said city to a point at or near the boundary line between the Commonwealth and the State of New York or such part or parts thereof as it may determine, and to issue turnpike revenue bonds of the Authority, payable solely from revenues, to finance such turnpike. St. 1952, c. 354, § 1, as amended St. 1955, c. 47.

§ 1-5. General grant of powers. *The Authority is hereby authorized and empowered—*

(a) To adopt by-laws for the regulation of its affairs and the conduct of its business:

(b) To adopt an official seal and alter the same at pleasure;

(c) To maintain an office or offices at such place or places within the commonwealth as it may determine;

(d) To sue and be sued in its own name, plead and be impleaded;

(e) To construct, reconstruct, maintain, repair and operate the turnpike or any part or parts thereof as it may determine, and the provisions of chapter ninety-one of the

General Laws shall not apply to the construction by the Authority of structures in, on or over rivers, streams and waterways; provided, that for drainage areas greater than one thousand acres the said structures shall be designed to pass a rare flood as computed by the Kinnison-Colby formula, and for drainage areas of one thousand acres or less, the said structures shall be designed to meet the requirements of the "Massachusetts Turnpike Drainage Standards" dated June fourth, nineteen hundred and fifty-four.

(f) To acquire sites abutting on the turnpike and to construct or contract for the construction of buildings and appurtenances for gasoline stations, restaurants and other services and to lease the same for the above purposes in such manner and under such terms as it may determine;

(g) To issue turnpike revenue bonds of the Authority for any of its corporate purposes, payable solely from the tolls and revenues pledged for their payment, and to refund its bonds, all as provided in this act;

(h) To fix and revise from time to time and charge and collect tolls for transit over the turnpike, and it shall upon request furnish a user of the turnpike a toll receipt showing the amount of toll paid, the classification of the vehicle and the date and place of exit from said turnpike.

(i) To establish rules and regulations for the use of the turnpike not repugnant to the provisions of the General Laws made applicable thereto by Section fifteen, and to provide penalties for the violation of said rules and regulations not exceeding fifty dollars for each offence, which may be recovered by indictment or by complaint before a district court and shall be accounted for and paid to the Authority;

(j) To acquire, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties under this act;

(k) To acquire in the name of the Authority by purchase or otherwise, on such terms and conditions and in such man-

ner as it may deem proper, or by the exercise of the power of eminent domain in accordance with the provisions of chapter seventy-nine of the General Laws or any alternative method now or hereafter provided by general law, in so far as such provisions may be applicable, such public lands, parks, playgrounds, reservations, cemeteries, highways or parkways, or parts thereof or rights therein, and any fee simple absolute or any lesser interest in such private property as it may deem necessary for carrying out the provisions of this act, including any fee simple absolute in, easements upon, or the benefit of restrictions upon, abutting property to preserve and protect the turnpike; provided, however, that whenever a parcel of private property so taken is used in whole or part for residential purposes, the owner or owners of said parcel may, within thirty days of the date of the Authority's notice to vacate such parcel, appeal to the Authority for a postponement of the date set for vacating, whereupon the Authority shall grant to the owner or owners of the property a postponement of three months from the date of such appeal; provided, however, that the appeal for such postponement shall be in the form of a written request to the Authority sent by registered mail, return receipt requested; and provided, further, that the Authority shall give security to the state treasurer, in such amount and in such form as may be determined by the state department of public works, for the payment of such damages as may be awarded in accordance with law for such taking, and that the provisions of section forty of said chapter seventy-nine, in so far as the same may be applicable, shall govern the rights of the Authority and of any person whose property shall be so taken;

(I) To designate the locations, and establish, limit and control such points of ingress to and egress from the turnpike as may be necessary or desirable in the judgment of the Authority to insure the proper operation and maintenance of the turnpike, and to prohibit entrance to the turnpike from any point or points not so designated;

(m) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this act;

(n) To employ consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment, and to fix their compensation;

(o) To receive and accept from any federal agency grants for or in aid of the construction of the turnpike, and to receive and accept aid or contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made; and

(p) To do all acts and things necessary or convenient to carry out the powers expressly granted in this act. St.1952, c. 354, § 5, as amended St.1955, c. 213; St.1955, c. 653, § 1; St.1957, c. 728, § 4.

PUBLIC WAYS AND WORKS

§ 1-5. General grant of powers

The Authority is hereby authorized and empowered—

[See main volume for text of (a) to (g)]

(h) To fix and revise from time to time and charge and collect tolls for transit over the turnpike, and it shall upon request furnish a user of the turnpike a toll receipt showing the amount of toll paid, the classification of the vehicle and the date and place of exit from said turnpike.

(i) To establish rules and regulations for the use of the turnpike not repugnant to the provisions of the General Laws made applicable thereto by section fifteen, and to provide penalties for the violation of said rules and regulations in which, except as provide in section fifteen C, shall not exceed

five hundred dollars for each offense, which may be recovered by indictment or by complaint before a district court eighty per cent of which shall be accounted for and paid to the Authority.

[See main volume for text of (j) to (l)]

(m) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this act; provided, that sections twenty-six to twenty-nine, inclusive, and sections forty-four A to forty-four L, inclusive, of chapter one hundred and forty-nine of the General Laws and sections thirty-nine F to thirty-nine M, inclusive, of chapter thirty of the General Laws shall apply to contracts of the Authority to the same extent and in the same manner as they are applicable to the commonwealth. All general or special laws, or parts thereof, inconsistent herewith, are hereby declared to be inapplicable to the provisions of this act. Notwithstanding the provisions of this clause, the Authority may, with the approval of the secretary of transportation and construction or his designee, without competitive bids and notwithstanding any general or special law, award a contract, otherwise subject to this section, limited to the performance of emergency repairs necessary to preserve the safety of persons or property.

[See main volume for text of (n) to (p)]

(q) Any sale of real property shall be awarded, after advertisement for bids, to the bidder who is the highest responsible bidder. The authority shall have the right to reject all bids and to re-advertise for bids. Before any real property shall be so sold or conveyed notice that such real property is for sale shall be publicly advertised in two daily newspapers published in the city of Boston, and, if such real property is located in any other city or town, in a newspaper published in such other city or town, once a week for three successive weeks. Such advertisements shall state the time and place where all pertinent information relative to the real property to

be sold or conveyed may be obtained, and the time and place of opening the bids in answer to said advertisements, and that the authority reserves the right to reject any or all such bids. All bids in response to advertisements shall be sealed and shall be publicly opened by the authority. The authority may require, as evidence of good faith, that a deposit of a reasonable sum, to be fixed by the authority, accompany the proposals. This clause shall not be applicable to any sale of real property by the Authority to the commonwealth or any city, town or public instrumentality nor to a sale of real property which is determined by the Authority to have a fair market value of five thousand dollars or less.

Amended by St.1971, c. 660, §§ 1, 2; St.1972. c. 632, § 4; St.1975, c. 843, § 1; St.1976, c. 491, § 1; St.1979, c. 377, § 1; St.1980, c. 49.

§ 1-15. Miscellaneous

The turnpike when constructed and upon to traffic shall be maintained and kept in good condition and repair by the Authority. The turnpike shall also be policed and operated by such force of police, toll-takers and other operating employees as the Authority may in its discretion employ.

All private property damaged or destroyed in carrying out the powers granted by this act shall be restored or repaired and placed in its original condition as nearly as practicable, or adequate compensation made therefor, out of funds provided under the authority of this act.

All counties, cities, towns and other political subdivisions and all public agencies and commissions of the commonwealth, notwithstanding any contrary provision of law, are hereby authorized and empowered to lease, lend, grant or convey to the Authority at its request upon such terms and conditions as the proper authorities of such counties, cities, towns, political subdivisions, agencies or commissions of the

commonwealth may deem reasonable and fair and without the necessity for any advertisement, order of court or other action or formality, other than the regular and formal action of the authorities concerned, any real property which may be necessary or convenient to the effectuation of the authorized purposes of the Authority, including public roads and other real property already devoted to public use.

Until the turnpike shall have become a part of the state highway system under the provisions of section seventeen of this act, the Authority shall be liable to any person sustaining bodily injury or damage in his property by reason of a defect or want of repair therein or thereupon to the same extent as though the turnpike were a way within the meaning of sections fifteen, eighteen and nineteen of chapter eighty-four of the General Laws, and shall be liable for the death of any person caused by such defect or want of repair to the same extent as is provided in chapter two hundred and twenty-nine of the General Laws. Any notice of such injury, damage or death required by law shall be given to any member of the Authority or to the secretary-treasurer.

Until the turnpike shall have become a part of the state highway system, it shall be deemed to be a way within the meaning and purport of sections two, four A, four B and five of chapter eighty-nine of the General Laws, and sections three A, three B, three C, six, seven, nine, ten, eleven, twelve, thirteen, fourteen, fourteen B, sixteen, the first sentence of section seventeen, section twenty, the first sentence of section twenty-one, sections twenty-three, twenty-four, twenty-five, twenty-six and thirty-four J of chapter ninety of the General Laws.

Any operator of a vehicle using the turnpike who refuses to pay the toll prescribed by the Authority, or who evades or attempts to evade payment of the toll prescribed by the Authority, may be arrested without a warrant.

Any person damaged in his property by the exercise of any of the powers granted by this act may recover his damages from the Authority under chapter seventy-nine of the General Laws.

On or before the first day of March in each year the Authority shall make an annual report of its activities for the preceding calendar year to the governor and to the general court. Each such report shall set forth a complete operating and financial statement covering its operations during the year. The Authority shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants, and the cost thereof may be treated as a part of the cost of construction or operation of the turnpike. Such audits shall be deemed to be public records within the meaning of chapter sixty-six of the General Laws.

Notwithstanding the provisions of chapters one hundred and thirty-four and one hundred and forty-seven of the General Laws, if money, goods or other property which has been abandoned, mislaid or lost on the premises of the Massachusetts Turnpike Authority comes into the possession of said Authority and remains unclaimed in its possession for a period of one hundred and twenty days, the Authority may sell the same, excepting money so unclaimed, at public auction after notice of such sale has been published for three successive weeks in a newspaper published in the city or town where such sale is to take place. The net proceeds of such sale, after deducting the cost of storage and the expenses of the sale, and all money so unclaimed, shall be paid into and become the property of the Authority. If, in the opinion of the Authority any property so abandoned, mislaid or lost which comes into the possession of the Authority and remains unclaimed in its possession for a period of one hundred and twenty days, is of the value of three dollars or less, the Authority may donate the same to a charitable organization.

Whoever, for the purpose of soliciting a ride on the turnpike, displays a sign, signals a moving vehicle, causes the stopping of a vehicle, or stands on property of the Authority in view of a ramp or roadway of the turnpike may be arrested without a warrant and shall be punished by a fine of not more than fifty dollars.

APPENDIX I

730 CMR: MASSACHUSETTS TURNPIKE AUTHORITY

730 CMR 4.00: PROVISIONS GOVERNING THE OPERATION OF
TANDEM TRAILER COMBINATIONS

SECTION

- 4.01 GENERAL REQUIREMENTS
- 4.02 MAXIMUM GROSS WEIGHT
- 4.03 EXCLUSION
- 4.04 APPROVAL
- 4.05 CERTIFICATION
- 4.06 BRAKE REGULATIONS
- 4.07 AXLES
- 4.08 EMERGENCY EQUIPMENT
- 4.09 IDENTIFICATION NUMBER
- 4.10 GROSS WEIGHT
- 4.11 CERTIFICATION
- 4.12 SAFETY CHAINS AND CABLES
- 4.13 INDICATION THAT TRAILERS FORM ONE UNIT
- 4.14 LAMPS AND REFLECTORS
- 4.15 INSPECTION AND TESTING
- 4.16 SHIFTING AND SWERVING
- 4.17 REGISTRATION OF DRIVERS
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- 4.19 DISTANCE BETWEEN VEHICLES
- 4.20 PASSING
- 4.21 INSURANCE
- 4.22 TRIP REPORTS AND OBSERVATION
- 4.23 TOLLS
- 4.24 EMERGENCY SERVICE AND TOWING VEHICLES
- 4.25 RENEWAL OF PERMITS
- 4.26 TURNPIKE REGULATIONS
- 4.27 MISCELLANEOUS POWERS
- 4.28 MAKEUP-BREAKUP AREAS

Tandem trailer units may operate on the Massachusetts Turnpike under a Tandem Trailer Permit issued by the Authority upon application to it by the prospective Permittee on MTT-2 subject to certain provisions as follows:

4.01: General Requirements

A complete double tandem trailer combination shall consist of a truck tractor, first semi-trailer, dolly, and second semi-trailer the length of either semi-trailer shall not be in excess of 45 feet, and the total length of the combination, including the dolly and load shall not exceed 108 feet. Notwithstanding the foregoing, the overall length of loaded tandem trailer automobile haulers may be increased to 109 feet by load overhang not exceeding one foot.

The Permittee when operating any vehicle or combination of vehicles including a complete tandem trailer combination, as hereinbefore described, shall be considered to be operating under a Special Hauling Permit provided that its dimensions do not exceed 13 feet 8 inches in height and 8 feet 6 inches in width and not exceeding the overall length hereinbefore described if the combination is propelled by a tractor which has been properly certified by the Authority for use in tandem trailer operations.

4.02: Maximum Gross Weight

Any such combinations of vehicles may not exceed a total maximum gross weight of 127,400 pounds. The maximum gross weight of the unit of tractor and first semi-trailer shall not exceed 71,000 pounds. The maximum gross weight of each unit of dolly and semi-trailer shall not exceed 58,400 pounds. The maximum gross weight that may be carried upon any combination of units is limited by the maximum gross weight that can be carried upon each unit and the axles thereof.

The maximum gross weight for the unit of tractor and first semi-trailer is governed by the formula — 35,000 pounds plus 1000 pounds per foot between the center of the foremost axle of the tractor and the center of the rear-most axle of the first semi-trailer. The gross load on a unit shall not exceed the sum of the allowable gross loads on the axles, which are as follows:

Maximum gross weight on any one axle	22,400 pounds
Tandem axles on one vehicle	
(under 10 feet apart)	36,000 pounds
(Axles measuring less than 46 inches between axle centers are considered as one axle.)	

The above limit of 127,400 pounds possible under these provisions requires a minimum axle spacing of 92 feet, measured between the center of the foremost axle of the tractor and the center of the rearmost axle of the rearmost semi-trailer. If the axle spacing is less, the permissible gross weight will be correspondingly reduced.

4.03: *Exclusion*

All over-dimensional and weight regulations of the Authority shall apply to such units unless specifically excluded under the terms of the Tandem Trailer Permit or these regulations.

4.04: *Approval*

A description of all tractors, dollies, and any semi-trailers used to tow another semi-trailer shall be filed with the Authority on forms MTT-3, MTT-4, and MTT-5 respectively. Approval of such vehicles must be obtained before they are used under a Tandem Trailer Permit. Authorization to use the vehicles may be withdrawn at any time, at the sole discretion of the Authority.

4.05: *Certification*

Both the tractor manufacturer for each tractor used in tandem trailer operations on the Turnpike and the Permittee shall certify to the Authority prior to the approval

of a tractor that it is capable of hauling the maximum permissible gross load to be transported by the Permittee at a speed of not less than 20 MPH on all portions of the Turnpike System. (The maximum grades on the Turnpike 3.75% and the longest such grade is approximately 800 feet in length.) If it is determined after the tractor is engaged in the tandem trailer operations that the vehicle cannot meet such requirements, the Authority's approval of the described vehicle may be withdrawn, and, in that event, the tractor shall not be used to haul tandem trailer units on the Turnpike until the gross loads are reduced, the tractor is modified, or other corrective measures are taken. Upon a new certification by both the tractor manufacturer and the Permittee that corrective measures have been taken and the tractor now will meet the minimum speed requirement, the Authority may reinstate its approval of the described tractor and it may again be used in the tandem trailer operations.

4.06: Brake Regulations

(1) **Brake Regulations.** A tandem trailer combination shall be equipped with full air brakes or air activated hydraulic brakes on the tractor and either air brakes or electric brakes on the dolly and all semi-trailers used in combination.

(2) The brakes on any vehicle, or combination of vehicles, used in the tandem trailer operations shall be adequate to control the movement of, and to stop and hold, such vehicle, or combination of vehicles, and shall meet the requirements of the provisions of the Massachusetts Motor Vehicle Law.

(3) Parking Brakes.

(a) Every combination of vehicles shall at all times be equipped with a parking brake or brakes adequate to hold the combination on any grade on which it is operated, under any conditions of loading, on a surface free from ice or snow.

(b) The parking brake or brakes shall at all times be capable of being applied in conformance with the requirements of 730 CMR 4.06(3)(a) by either the driver's muscular effort or by spring action or by other energy, provided that if such other energy is depended on for application of the parking brake, then an accumulation of such energy shall be isolated from any common source and used exclusively for the operation of the parking brake.

(c) The parking brake or brakes shall be so designed, constructed, and maintained that when once applied they shall remain in the applied condition with the required effectiveness despite exhaustion of any source of energy or leakage of any kind, and so that they cannot be released unless adequate energy is available upon release of such brake or brakes to make immediate further application with the required effectiveness.

(4) Every unit in a tandem trailer combination shall be equipped with brakes acting on all wheels, except that truck tractors having three axles need not have brakes on the front wheels.

(5) Every semi-trailer and every dolly shall be equipped with brakes of such a character as to be applied automatically and promptly upon breakaway from the towing vehicle, and means shall be provided to maintain application of the brakes on the trailer in such a case for at least 15 minutes. Air brake systems on towed vehicles shall be so designed by the use of "no-bleed-back" relay emergency valves, or equivalent devices, that the supply reservoir used to provide air for brakes shall be safeguarded against backflow of air from the reservoir through the supply line. Every truck tractor used to tow a trailer or trailers shall be equipped with a means for providing that, in case of a breakaway of such trailer, or trailers,

the service brakes on the towing vehicle will be sufficiently operative to stop the towing vehicle. Every truck shall, in addition to the above, be equipped with two means of activating the emergency features of the trailer brakes. One of these means shall operate automatically in the event of reduction of the towing vehicle's air supply to a fixed pressure, which shall not be lower than 20 pounds per square inch nor higher than 45 pounds per square inch. The other means shall be a manually controlled device readily operable by a person, seated in the driving seat, and its emergency position or method of operation shall be clearly indicated. In no instance may the manual means be so arranged as to permit its use to prevent operation of the automatic means. The automatic and manual means of application required by this regulation may be, but are not required to be, separate.

(6) Brake Tubing and brake hose shall be:

(a) Designed and constructed of proper material and so installed as to insure proper continued functioning.

(b) Sufficiently long and flexible as to accommodate without damage all normal motion of the parts to which they are attached.

(c) Suitably secured against chafing, kinking, or other mechanical injury.

(d) Brake hose shall be so constructed as to insure adequate and continued functioning.

(e) Be designed, constructed, and installed so as to insure, when properly connected, an attachment free of leaks, constrictions, or other defects.

(f) Have suitable provision in every detachable connection to afford reasonable assurance against accidental disconnection.

(7) All brakes with which tractors used in the tandem trailer operations are equipped shall be operative at all times, except brakes on disabled tractors being towed;

but means may be used for reducing the braking effort on the front wheels of any truck tractor or of removing the braking effort on the front wheels of any three-axle truck tractor.

(8) Every truck tractor shall have the braking system so arranged that one application valve shall, when applied, operate all the service brakes on the units of a tandem trailer combination. This requirement shall not be construed to prohibit truck tractors from being equipped with an additional valve to be used to operate the brakes on a trailer, or trailers, in a tandem trailer combination.

(9) (a) Every combination of truck tractor and trailers used in tandem trailer operation shall be equipped with brake air reserve capacity or a reservoir sufficient to insure a full service brake application with the tractor engine stopped without depleting the air pressure below 70% of that pressure indicated by the tractor air gauge immediately before brake application is made. For purposes of this section, a full service brake application is considered to be made when the service brake pedal is pushed to the limit of its travel.

(b) Every truck tractor used in tandem operation shall have at least one of its air reservoirs so safeguarded by a check valve or equivalent device that in the event of failure or leakage in its connections to the source of compressed air, the air supply in the protected reservoir shall not be depleted by the leak or failure rendering the service brakes inoperative.

Means other than loosening or disconnecting of any connection between the source of compressed air and the check valve, and the necessary tools for operation of such means, shall be provided to prove that the check valve is in working order.

(10) Every truck tractor used in the tandem trailer operations shall be provided with a warning signal readily audible or visible to the driver which will give continuous warning at all pressures below a fixed pressure not less than one-half the air compressor governor cut-out pressure. In addition, each truck tractor shall be equipped with a pressure gauge arranged to indicate in pounds per square inch the pressure available for braking.

(11) On units of tandem trailer combinations certified on and after June 1, 1968, the brake application line of every tandem combination shall be equipped with suitable devices to accelerate application and release of the brakes of the towed vehicles, and these devices shall be so arranged that the brake application signal does not pass directly through more than one trailer, but is dead-ended at the rear of the trailer or alternatively at the dolly, and the application signal then each retransmitted to the dolly and the second trailer. The devices required above for retransmission of the application signal shall be closely connected to and supplied by air reservoirs which have their air supplied to them by the emergency line. In the event of rupture of the application line on the towed vehicles of any tandem combination, the loss of brake application shall be limited upstream of the loss to those vehicles between the rupture and the first retransmission device.

4.07: Axles

A tractor, which will be used to haul tandem trailer units with a total gross weight of 110,000 pounds or more, shall be equipped with tandem rear axles, except that two-axle tractors which provide driving power to both axles will be permitted to pull up to 127,400 pounds. When tandem axles are provided on a tractor, driving power shall be applied to all wheels on both axles.

4.08: Emergency Equipment

Each truck tractor used in the tandem trailer operations shall be equipped at a minimum with emergency equipment as follows:

(1) Either;

- (a) two fire extinguishers, one a 20 pound dry chemical type, and one a 2 1/2 gallon "Karboly" type, or equivalents acceptable to the Authority, or
- (b) a fire extinguisher capability with an aggregate rating of not less than 2 A-20 BC. This required capability may be obtained by carrying either one or two extinguishers the sum of whose capabilities meet the above requirements.

All extinguishers used shall bear a label indicating the rating of the units in accord with the standards of the Underwriters Laboratories, Inc. Extinguishers shall utilize an extinguishing agent which does not need protection from freezing and which shall be properly filled and securely mounted in brackets.

(2) At least one spare fuse or other overload protective device, if the devices used are not of a reset type, for each kind and size used.

(3) One set of tire chains for at least one driving wheel on each side between October 15 and May 1 inclusive.

(4) Flares; or fusees, or red electric lanterns of a type approved by the Registrar of Motor Vehicles of the Commonwealth of Massachusetts, the state in which the vehicle is registered, or meeting the requirements of the United States Department of Transportation, for use as warning devices for stopped vehicles during the hours of darkness. Red flags not less than 12" x 12" in size, or any combination of the above, for use as warning devices for stopped vehicles during the hours of daylight.

4.09: Identification Number

The Turnpike Authority will issue an identification number which shall be stenciled on the left side of each

tractor for use in the tandem trailer operations. In addition, a certificate bearing the complete description of a particular tractor shall be issued by the Authority for each such tractor, and such certificate shall be suitably protected and carried in the cab of the tractor which it describes. The State Police and Authority personnel shall be permitted to view the certificate and compare the description thereon with the vehicle in which such certificate is carried. Any discrepancy between the description on the certificate and the actual description of the vehicle may result in the withdrawal of the approval of the particular tractor or all of the vehicles and equipment of the Permittee.

Compliance with the Provisions Governing the Operation of Tandem Trailer Combinations of the New York State Thruway Authority requiring issue of an identification number, its stenciling on the tractor and issue of a certificate describing the tractor shall be deemed compliance with the similar requirements of these Provisions.

4.10: Gross Weight

In the assembly of tandem combinations prior to their operation on the Turnpike, the Permittee shall ascertain the total gross weight of each trailer of the proposed combination. In the event that the gross weight of the trailers vary by more than 20%, the Permittee shall couple them for each trip according to their gross weight, that is, with the heaviest trailer coupled to the tractor.

4.11: Certification

In order to comply with 730 CMR 4.10, all semi-trailers except the rear trailer used in tandem operation shall have sufficient structural strength to permit the satisfactory attachment of the coupling device (pintle hook or its equivalent) at the rear of the trailer, and each coupling device shall be capable of towing a trailer and dolly. The Permittee shall certify to the Authority that

every trailer certified for use in tandem service is adequate for this service, and in addition the trailer manufacturer on new equipment shall certify the adequacy of the trailer, and every coupling device which shall incorporate no-slack design such as air take-up, fitted pin and socket, mechanical wedging or similar designs of couplers, which eliminate fore and aft slack in the coupling of dollies to semi-trailers. The no-slack feature of the coupler shall be in constant operation while the tandem trailer combination is operated on the Turnpike. The coupler used on each semi-trailer in conformance with this section shall be specified by the Permittee on form MTT 4, giving semi-trailer descriptions and the vehicle identification number on the Permittee's records (company number) and filed with the Authority in conformance with 730 CMR 4.04.

4.12: Safety Chains and Cables

(1) Every converter dolly certified on and after June 1, 1968, used to convert a semi-trailer to a full trailer may have either single or tandem axles at the option of the Permittee. It shall be coupled with one or more safety chains or cables to the frame, or to an extension of the frame, of the motor vehicle by which it is towed. Attachment of these chains or cables to the pintle hook or to any other device on the towing vehicle to which the tow bar is attached will not meet this requirement; provided, however, that a separate place of attachment independent of the pintle hook on a pintle hook forging or casting may be used to attach the safety chains or cables to the towing vehicle.

(2) Safety chains or cables shall have no more slack than is necessary to permit proper turning.

(3) Each chain or cable and each means of attachment shall have an ultimate strength at least equal to the gross weight of the vehicle being towed.

(4) Chains or cables shall be so connected to the towed and towing vehicle and to the tow bar as to prevent the tow bar from dropping to the ground in the event the tow bar fails or becomes disconnected.

5) Every converter dolly with a hinged tow bar shall be equipped with two safety chains, or cables, or a bridge arrangement of a single chain or cable, attached to its frame or axle at two points as far apart as the configuration of the frame or axle permits. Such chains or cables shall be either two separate pieces, each equipped with a hook or other means for attachment to the towing vehicle, or a single piece leading along each side of the tow bar from the two points of attachment on the towed vehicle and arranged into a bridle with a single means of attachment to be connected to the towing vehicle. When a single length of cable is used, a thimble and twinbase cable clamps shall be used to form the forward bridle eye. The hook or other means of attachment to the towing vehicle shall be secured to the chains or cables in a fixed position.

(6) Converter dollies with solid tongues and without hinged tow bars or other swivels between the fifth wheel mounting and the attachment joint of the tongue eye or other hitch device may be equipped with either one or two safety chains or cables, provided that if only one chain or cable is used, it shall be in line with the center line of the trailer tongue. The point of attachment of these chains or cables to such solid tongue converter dollies is optional provided only that such attachment is to the rear of the attachment of the tongue eye or other hitch device.

(7) Where two safety chains or cables are used and attached to the towing vehicle at separate points, the points of attachment on the towing vehicle shall be located equally distant from, and on opposite sides of, the center

line of the towing vehicle. Where two chains or cables are attached to the same point on the towing vehicle, and where a bridle or a single chain or cable is used, the point of attachment must be on the center line of the towing vehicle.

4.13: Indication That Trailers Form One Unit

When the distance between the rear of the one semi-trailer and the front of the following semi-trailer is 10 feet or more, the dolly shall be equipped with a device, or the trailers shall be connected along the sides with suitable material, which will indicate to other Turnpike users that the trailers are connected and are in effect one unit. Such devices or connections shall be approved by the Authority prior to use on a tandem trailer combination.

4.14: Lamps and Reflectors

Each trailer in a tandem trailer combination shall be equipped at a minimum with electric lamps and reflectors mounted on the vehicle as follows:

- (1) Two amber clearance lamps on the front, one at each side of the trailer.
- (2) On the rear: one red tail lamp; one red or amber stop lamp; two red clearance lamps, one on each side; two red reflectors, one on each side.
- (3) On each side: one amber side-marker lamp located at or near the front; one red side-marker lamp located at or near the rear; one amber reflector, located at or near the front; one red reflector, located at or near the rear.
- (4) Each dolly converter, when towed singly by another vehicle, and not as a part of a full trailer, shall be equipped with a minimum of one stop lamp, one tail lamp and two reflectors on the rear.

4.15: Inspection and Testing

After all of the component vehicles in a tandem trailer combination are completely hooked up, and prior to the departure of the unit from the assembly area, the driver, or a mechanic,

shall inspect the combination unit and make certain tests on the vehicle, equipment, and hook-up to determine whether each item is in proper operating condition and is satisfactory. The items to be inspected and the tests to be made must include at least the following:

Before starting engine —

Bleed air tanks

Inspect brake lines to dolly and trailers

Inspect electric lines to dolly and trailers

Inspect coupling devices

Inspect tires and wheels

Inspect springs

Inspect body and load

Inspect, emergency equipment

After starting engine — (Out of cab)

Check for leaks

Check lights — Head, Tail, Stop, Clearance, and
Marker

Check reflectors

Check fuel and exhaust system

After starting engine — (In cab)

Check oil pressure

Check ammeter

Test Engine performance

Test horn

Test windshield wipers

Test service (slowing or stopping brakes)

Test parking brakes

Test clutch

Test transmission

Test steering

Check rear vision mirrors

Test speedometer

4.16: *Shifting and Swerving*

Coupling devices shall be so designed, constructed and installed, and the vehicles in a tandem trailer combination shall be so designed and constructed, as to insure that any such combination traveling on a level, smooth, paved surface will follow in the path of the towing vehicle without shifting or swerving from side to side over three inches to each side of the path of the towing vehicle when it is moving in a straight line.

4.17: *Registration of Drivers*

Proposed drivers of tandem trailer units shall be registered by the Authority prior to driving such equipment on the Turnpike. Applications for registration shall include all specified driving, safety, and physical examination records. Special identification cards will be issued to, and shall be carried by, all registered drivers. Registrations may be refused by the Turnpike Authority or withdrawn by it at any time, if it is deemed in the best interest of the Authority.

Issuance of a special identification card to a driver registered by the New York State Thruway Authority shall be deemed compliance with the requirements of registration by these Provisions.

4.18: *Speed Regulations*

Tandem trailer units shall comply with the existing speed regulations for trucks and shall be subject to the rigid enforcement of 55 MPH speed limit, or any lower speed limit posted because of adverse weather or road conditions, for such vehicles on the Turnpike.

4.19: *Distance Between Vehicles*

A minimum distance of 500 feet, or approximately four delineator spaces, shall be maintained under normal conditions between a tandem trailer unit and a vehicle traveling in front of it in the same travel lane, except when passing occurs.

4.20: *Passing*

A tandem trailer unit may pass another vehicle traveling in the same direction only if the speed differential will allow the tandem trailer unit to complete the maneuver and return to the normal driving lane within a distance of one mile.

4.21: *Insurance*

In order to comply with the Authority's insurance requirements for tandem trailer operations, the permittee must supply the Authority with a copy of its insurance policy which must include:

(1) An endorsement naming the "Massachusetts Turnpike Authority and/or the Commonwealth of Massachusetts and its agents, officers and employees" as an additional insured.

(2) An endorsement certifying the policy's liability limits of:

<u>BODILY INJURY</u>	<u>PROPERTY DAMAGE</u>
\$1,000,000/\$1,000,000	\$500,000

(3) An endorsement with the following description of policy coverage: "This policy includes coverage for public liability arising with respect to all movements of all tandem trailer units or portions thereof, of single units or portions thereof, service vehicles or other units incident to the use of the Turnpike by the Permittee or by any one acting by, through or for the named insured, including omissions and supervisory acts of the Commonwealth of Massachusetts and the Massachusetts Turnpike Authority, their agents, officer or employees."

(4) An endorsement with the following description of policy coverage: "The naming of the Massachusetts Turnpike Authority and the Commonwealth of Massachusetts as additional insureds does not exclude the liability of the Permittee, and does not exclude the liability of any one

acting by, through or for the Permittee, for damages to the property or facilities of the Massachusetts Turnpike Authority or the Commonwealth of Massachusetts”.

(5) An endorsement providing for 30 days advance notice before cancellation or material change of coverage provided. The notice is to be mailed to the Massachusetts Turnpike Authority, Prudential Center, Boston, Massachusetts.

4.22: *Trip Reports and Observation*

The Permittee shall, upon request, furnish the Authority with all data and information pertaining to an individual trip by a tandem trailer unit or the overall tandem trailer operation of the Permittee on the Turnpike. The Permittee will afford representatives of the Authority opportunity for observing the operations by riding with the units or in any other prescribed manner so long as governmental and insurance regulations are complied with.

4.23: *Tolls*

The toll for any tandem combination will be currently applicable toll for the following classifications:

Class 4-Tandem trailer unit with fewer than eight axles

Class 9-Tandem trailer unit with eight or more axles

4.24: *Emergency Service and Towing Vehicles*

Emergency service and towing vehicles used for maintenance of vehicles of tandem trailer Permittees may be certified for operation on the Turnpike on form MTT 1, provided that the Permittee certifies on form MTT 11 that:

(a) The vehicle is completely equipped with emergency lighting equipment.

(b) The vehicle will not be used in violation of the Provisions Governing the Operation of Tandem Trailer Combinations or of the Rules and regulations for Use and Occupancy of the Turnpike.

4.25: *Renewal of Permits*

Tandem Trailer Permits may be renewed annually by the Authority upon submission to it of Form MTT-2 requesting such renewal. It must be accompanied by a letter, on company stationery, signed by a duly authorized designee of the Permittee requesting recertification of equipment to be continued in use in the tandem operation and which has been previously certified pursuant to 730 CMR 4.11. The letter must be substantially similar to and include the information set forth in the sample letter supplied by the Authority entitled "Sample Letter for Recertification of Tandem Equipment".

4.26: *Turnpike Regulations*

Except as noted herein, and in the Tandem Trailer Permit, all rules and regulations governing the use and occupancy of the Turnpike shall apply to the operation of tandem trailer units on the Turnpike.

4.27: *Miscellaneous Powers*

The Authority may revoke or temporarily suspend at will any permit issued for the operation of tandem combinations on the Turnpike, at its sole discretion, in whole or in part. The issuance of such a Permit confers no property right whatsoever upon the Permittee or any other person or entity. The Authority also specifically reserves the right to amend or repeal the Provisions pursuant to which such Permit has been issued, at its sole discretion, in the exercise of its police powers or any other powers which it may possess. If the Authority shall temporarily suspend tandem trailer operations at any time for any reason, including reasons of inclement weather, reconstruction, or other conditions, the instructions of the Authority and of the State Police shall be complied with immediately.

4.28: Makeup-Breakup Areas

Tandem trailer units shall be assembled and disassembled only in special makeup - breakup area designated for this purpose by the Authority; no combination consisting of a truck tractor, first semi-trailer and dolly, with or without a second semi-trailer, shall exit from the Turnpike into a publicly maintained highway within the Commonwealth of Massachusetts. It shall be the responsibility of the trucking companies to see that all movements across traffic while entering or leaving a makeup - breakup area are supervised to minimize the possibility of accidents. Appropriate and adequate protection devices, such as flags, flares, or lights, shall be employed to warn and stop traffic while a tandem trailer unit or any of its component parts, is maneuvering on the pavement. The Permittee shall assume all responsibility for his vehicles and equipment, as well as the contents thereof, while such vehicles and equipment are in the makeup - breakup area.

MASSACHUSETTS TURNPIKE REGULATIONS
GOVERNING SINGLE TRACTOR-TRAILERS PRIOR TO
AMENDMENTS OF 1980

730 CMR: MASSACHUSETTS TURNPIKE AUTHORITY

5.04: *Traffic Operation and Safety*

(1) *Officers, Signs, Signals, Markings and Devices.*

(a) Obedience to Officer. No person shall fail to comply with any lawful order, signal or direction of a Turnpike police officer.

(b) Erection of Signs, Signals, etc. Signs, signals, devices and markings within the Turnpike shall be erected and applied only by, or at the direction of, the Authority.

(c) Obedience to Signs, Signals and Markings. No person shall fail to comply with the instructions of an official sign, signal, marking or device unless otherwise directed by a Turnpike police officer.

(d) Interference with Official Devices. No person shall deface, injure, move, remove, obstruct or interfere with any official sign, signal, marking or device.

(2) *Parking, General Prohibitions.* No person shall park a vehicle within the Turnpike except within those areas where an official sign or marking indicates that parking is allowed.

(3) *One-Way.*

(a) General Restrictions. All lanes and roadways of the Turnpike except those where official signs or markings specifically indicate two-way traffic, shall be used for one-way traffic.

(b) Prohibited Operation. No person shall operate a vehicle upon the Turnpike contrary to the direction indicated or intended for travel, unless so directed by a Turnpike police officer or by an official sign or marking.

(4) *Limitations on Use of Turnpike.*

(a) Prohibited Entry Upon and Use of Turnpike. Vehicles which are loaded in such a manner or with such materials or which are so constructed, operated, or equipped as to endanger persons or property, or to render the use of the Turnpike unsafe including, but without limitation, the following types of vehicles, shall not enter upon or use the Turnpike.

1. Vehicles with a person standing on the outside, or sitting with feet dangling on the rear.
2. Vehicles with metal, solid or deflated pneumatic tires; and vehicles with tires in a worn or bald condition.
3. Vehicles with caterpillar treads and self-propelled or towed construction, agricultural or similar equipment not designed for or employed in general highway travel.
4. Push carts, wheelbarrows, bicycles, perambulators, velocipedes and similar vehicles.
5. Vehicles loaded with animals or poultry, not properly confined.
6. Vehicles containing loads not properly secured so as to prevent droppage, leakage or spillage.
7. Vehicles containing explosives. Vehicles, including tank trucks loaded or empty, used to transport liquefied petroleum gas or LNG, except under special permit and subject to special regulations issued by the Authority. (See 730 CMR 5.05.)

8. Vehicles containing atomic, nuclear, radioactive or fissionable material, except under special permit issued by the Authority.

9. Vehicles in tow by a rope, chain or other non-rigid connection.

10. Vehicles, including any load thereon, exceeding the following maximum dimensions, except under special hauling permit issued pursuant to the Special Provisions Governing The Issuance and Applicable To The Use Of Special Hauling Permit (730 CMR 5.06):

TABLE 1.

Weight:	(Single vehicle with 2 axles)	46,000 lbs.
Weight:	(Single vehicle with more than 2 axles and vehicle combinations)	73,000 lbs.
Width:		8 ft. 6 in.
Height:		13 ft. 8 in.
Length:	(Single vehicle except buses with 3 axles)	35 ft.
Length:	(Vehicle combinations)	55 ft.

Compliance with the limitations of 730 CMR 5.04(4)(a)10 shall constitute a license to vehicles to use the Turnpike without the necessity of undergoing investigations designed to protect Turnpike traffic and facilities. Special hauling permits for other vehicles, issued for appropriate terms and only after investigation, shall similarly constitute a license to use the Turnpike, subject to conditions contained therein.

(b) Pedestrians, etc. Entry upon and use of the Turnpike by pedestrians, horses, riders on horseback, and horse-drawn vehicles is prohibited.

(c) Tunnel. In addition to the prohibitions contained in 730 CMR 5.04(4)(a) and 5.04(4)(b), the following types of vehicles shall not enter the tunnel:

1. Vehicles used for carrying dangerous materials such as inflammable or toxic liquids, including fuel oils, kerosene and gasoline; corrosive liquids, such as mineral acids; bottled gasses; compressed gasses of a poisonous nature; poisonous gasses; and poisonous liquids which give off poisonous vapors at ordinary temperatures.

2. Vehicles giving off offensive or obnoxious odors.

3. Vehicles emitting an excessive amount of smoke.

(d) Aircraft. Use of the Turnpike for landing of aircraft is prohibited except in extreme emergency.

No aircraft shall be allowed to take-off in flight from any portion of the Turnpike except under special permit issued in advance by the Authority. Removal of an aircraft from the Turnpike by means other than take-off in night shall be subject to approval of the Turnpike police.

(e) Removal of Vehicles. A vehicle which becomes disabled or is left unattended for longer than two hours on the Initial Turnpike may be removed by, or at the direction of, a Turnpike police officer, at the risk and expense of the operator or owner. Such vehicles may not be moved from the place of storage until payment is made for storage, towing and other charges.

A vehicle which becomes disabled or is left unattended on the Boston Extension may be removed by or at the direction of a Turnpike police officer at the risk and expense of the operator or owner.

(f) Hitchhiking — Loitering. The solicitation of a ride, commonly known as "hitchhiking", is prohibited on the Turnpike. No person shall loiter in or about the Turnpike for the purpose of "hitchhiking", or for any other purpose.

(g) Commercial Activity — Solicitation of funds. No person shall carry on any commercial activity except the transportation of persons or property by motor vehicle within the Turnpike without the written permission of, or unless under contract with the Authority. No person shall post, distribute, or display signs, advertisements, circulars, or printed or written matter within the Turnpike without written permission of the Authority. No person shall solicit funds for any purpose within the Turnpike without written permission of the Authority.

(5) *Operation of Vehicles.*

(a) Keep Right. The operator of a vehicle shall drive in the lane nearest the right shoulder of the roadway, when that lane is available for ordinary travel, except when overtaking another vehicle in that lane or at the direction of a Turnpike police officer or official sign, signal, marking or device. When the lane nearest the right shoulder of the roadway is a creeper lane, the operator shall drive his vehicle in the lane adjacent to said creeper lane, except when overtaking another vehicle in that lane or at the direction of a Turnpike police officer or official sign, signal, marking or device.

(b) Overtaking and Passing. The operator of a vehicle overtaking another vehicle shall, when necessary, signal that vehicle and also any vehicle to the rear, in sufficient time before attempting to pass to give ample warning of such movement. If both vehicles are in the same lane, the operator of the overtaking vehicle shall gradually cross to an adjacent lane, which shall not be a paved shoulder or a creeper lane, avoiding a sudden turn and pass the overtaken vehicle at a safe lateral distance.

(c) Operation of Overtaken Vehicle. The operator of a vehicle about to be overtaken and passed by another vehicle shall keep in the lane he then occupies and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

(d) Space Between Vehicles. The operator of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard to the speed of such vehicle, the traffic upon and the condition of the roadway.

(e) Traffic Control Signals. The operator of a vehicle approaching traffic control signals exhibiting colored lights shall obey the commands of such light which have been ascribed the following meanings:

1. Green Light or Arrow — Proceed generally or as directed by arrow.

2. Red Light or X — Lane closed to traffic.

3. Flashing Light — Reduce speed and proceed with caution and in compliance with any supplemental direction.

(f) Crossing Median Prohibited. No operator shall drive a vehicle upon or across the median or upon any area which has not been constructed or intended for travel except at the direction of a Turnpike police officer or official sign, signal, marking or device.

(g) Use of Cross-Overs.

1. Initial Turnpike — No operator shall drive a vehicle across a median cross-over unless the vehicle is an Authority vehicle, an emergency vehicle, a maintenance vehicle, a repair vehicle, a service vehicle, or a vehicle authorized by the Authority in writing so to be driven.

Before using a cross-over, except those located at a Turnpike police barracks or maintenance depot, the driver of an Authority vehicle, an emergency vehicle, a maintenance vehicle, a repair vehicle, a service vehicle or a vehicle authorized by the Authority so to be driven, shall drive onto the right hand shoulder and stop until the pavement may be crossed in safety. After the vehicle, except vehicles plowing

snow or sanding Turnpike roadways and repair vehicles with vehicles in tow, has entered the cross-over, it shall again be stopped until entry can be made to the travel lane without presenting a hazard to through traffic. Vehicles plowing snow or sanding Turnpike roadways and repair vehicles with vehicles in tow, shall remain stopped on the right hand shoulder until both roadways may be crossed in safety in a single movement without presenting a hazard to through traffic.

2. Boston Extension — No operator shall drive a vehicle across a median cross-over unless the vehicle is an Authority vehicle, an emergency vehicle, a repair vehicle, a service vehicle, or a vehicle authorized by the Authority in writing so to be driven.

Before using a cross-over, the driver of an Authority vehicle, an emergency vehicle, a maintenance vehicle, a repair vehicle, a service vehicle or a vehicle authorized by the Authority so to be driven, shall drive to the extreme right side of the pavement and stop until the pavement may be cross in safety. The vehicle shall remain stopped in the extreme right side of the pavement until both roadways may be may be crossed in safety in a single movement without presenting a hazard to through traffic.

(h) Crossing Traffic Lines. No person shall drive a vehicle across a solid traffic line except in an emergency or as required by 730 CMR 5.04(5)(g).

(i) Backing and U-Turns Prohibited. Except as provided in 730 CMR 5.04(5)(g), no operator shall back his vehicle or make a U-turn on the Turnpike roadway, creeper lane, ramps and approaches to toll booths.

(j) Stops at Toll Booths. At any toll booth encountered the operator shall bring his vehicle to a complete stop.

(k) Disabled Vehicles. Whenever a vehicle becomes disabled and must be removed from the Turnpike, it shall be towed or pushed to the most convenient place of storage by a vehicle authorized by the Authority to perform such service. Pending such removal, the operator or a Turnpike police officer shall, if practical so to do, move it, or cause it to be moved, to the extreme right side of the pavement or to an interchange.

(l) Entering Turnpike Roadway. Except as otherwise directed by a Turnpike police officer or official sign, signal, marking or device, no person shall operate, push or otherwise cause to move, any vehicle on the Turnpike except in the direction of traffic. The operator of a vehicle entering a service area, interchange, shoulder, or deceleration lane shall enter from the right hand traffic lane. Upon entering a traffic lane from a service area or interchange, the operator of a vehicle shall use the acceleration lane and he shall enter the Turnpike roadway with caution so as not to interfere with or endanger traffic.

(m) Disabled Vehicle Lighting. Whenever a vehicle having a gross weight in excess of six thousand pounds becomes disabled upon any portion of the Turnpike the operator of such vehicle shall, during the time when lights are required to be displayed on motor vehicles by Section 15 of Chapter 85 of the General Laws, place three lighted flares or lights in the following positions:

1. One flare or light in the center of the lane or shoulder in which such vehicle remains and approximately two hundred feet to the rear of the such vehicle.
2. One flare or light on the left lane line of the lane or shoulder in which such vehicle remains and approximately one hundred feet to the rear of such vehicle;
3. One flare or light five feet to the traffic side of the vehicle and at a point opposite the door of the vehicle.

(n) Care in Starting, Stopping or Turning. The driver of any vehicle before starting, stopping or turning shall first see that such movement can be made in safety and if such movement would interfere with the normal movement of other traffic, the driver shall wait for a more favorable opportunity to make such a movement. If the operation of another vehicle will be affected by a stopping or turning movement, the driver of such other vehicle shall be given a plainly visible signal indicating such stopping or turning movement.

(o) Whenever there is sufficient light within the traveled portion of the highway to make clearly visible all vehicles, persons or substantial objects for a distance of 350 feet, and whenever the driver of a vehicle approaches an on-coming vehicle within 500 feet, the headlamps shall be so regulated or operated that no dangerous or dazzling light when measured 75 feet or more ahead of the lamps on a surface of uniform grade shall rise to a greater height than 42 inches above such grade.

(p) Left Lane Restriction. On the Initial Turnpike between Interchange 14, Weston, and Interchange 9, Sturbridge, heavy commercial vehicles, except buses, shall be restricted in ordinary operation to the right-hand travel lane, and in overtaking and passing shall be restricted to the next adjacent passing or travel lane, and shall not use any other lanes except in an emergency.

On the Boston Extension, heavy commercial vehicles and buses shall be restricted in ordinary operation to the right-hand travel lane, and in overtaking and passing shall be restricted to the next adjacent passing or travel lane, and shall not use any other lanes except in an emergency or except when access to or egress from the Turnpike is provided by the extreme left lane, and in this circumstance, shall use such extreme left lane only to the extent that it is reasonably necessary to enter or leave the Turnpike in Safety.

For the purpose of this section, heavy commercial vehicles shall be defined as those in excess of two and one-half ton used for transportation of goods, wares and merchandise.

(6) *Speed Limits.*

(a) In General. No person shall operate a vehicle on the Turnpike at a rate of speed greater than that which is reasonable and proper, having regard to traffic, condition of the roadway and the safety of the public.

(b) Maximum Limits. No person shall operate a motor vehicle on the Turnpike roadway at a rate of speed in excess of fifty-five (55) miles per hour; excluding from such rate of speed motor vehicles which may be authorized by special permit to exceed such rate of speed. Where a lesser speed limit is posted, no person shall operate a vehicle in excess of such posted speed limit.

(c) Minimum Limits. No person shall operate a vehicle on the Turnpike roadway at a rate of speed less than forty (40) miles per hour except on a creeper, acceleration or deceleration lane or where a lesser speed is posted on such roadway or when the vehicle is incapable of operation at such minimum speed because of mechanical failure, or when weather or roadway conditions require a lesser speed.

(7) *Miscellaneous Provisions.*

(a) Accident Reports. The operator of a vehicle involved in an accident on the Turnpike, resulting in injury or death, to a person or damage to property, real or personal, shall report the same to a Turnpike police officer, at the nearest police barracks. Compliance with this section shall not relieve the operator from the further responsibility of reporting the accident as required by law.

(b) Defacing Property. No person shall cut, mutilate or remove any trees, shrubs or plants located on the Turn-

pike. No person shall paint, mark or mar any wall, bridge or other structure within the Turnpike.

(c) Disposal of Waste or Other Materials. No person shall place, drop or throw an article onto or within the Turnpike which may cause injury or death to a person or damage to property, real or personal.

No person shall dispose of an article of waste material of any kind or description within the Turnpike other than at a place specifically designated therefor.

(8) *Exemptions, Penalties, etc.*

(a) Exemptions. These rules and regulations shall not apply to an operator of a vehicle acting in conformity with the direction of a Turnpike police officer; to an operator of a vehicle actually engaged in work upon the Turnpike when the nature of the work necessitates a departure from any of these rules and regulations; to a Turnpike police officer when engaged in the performance of duties which necessitates a departure from any of these rules and regulations; or to an operator of an emergency vehicle when an emergency necessitates a departure from any of these rules and regulations.

These exemptions shall not, however, relieve the operator of a vehicle from other legal consequences of his action.

(b) *Prima Facie* Responsibility for Violations. If a vehicle is within the Turnpike in violation of any provision of these rules and regulations and the identity of the operator of such vehicle cannot be determined, the person in whose name such vehicle is registered shall be deemed *prima facie* responsible for such violation.

(c) Penalty. Whoever violates any provision of these rules and regulations shall be punished by a fine not exceeding five hundred dollars (\$500.00) for every such offense.

(d) Repeal. All rules and regulations for the use of the Massachusetts Turnpike adopted and established by the

Authority prior to the effective date hereof, are repealed. Such repeal shall not affect any violation committed, or any punishment, penalty, fine, or forfeiture incurred, before the repeal takes effect, or any suit, prosecution or proceeding pending at the time of the repeal for an offense committed, or for the recovery of a fine, penalty or forfeiture incurred, under the rules and regulations repealed.

5.05: Appendix 1: Transportation of Liquefied Petroleum Gases, Including Propane, Butane, LP Gas and LPG, and Liquefied Natural Gas or LNG

Special regulations issued by the Massachusetts Turnpike Authority for the transportation of liquefied petroleum gases, including Propane, Butane, LP gas and LPG and liquefied natural gas or LNG on the Massachusetts Turnpike.

(1) *Legal Authority.* 730 CMR 5.04(4)(a)7 of the Rules and Regulations for the Use of the Massachusetts Turnpike, Including the Boston Extension Thereof, (hereinafter called Rules and Regulations) prohibits entry upon and use of the Turnpike and Extension by vehicles, including tank trucks, loaded or empty, used to transport liquefied petroleum gases, including Propane, Butane, LP gas and LPG and liquefied Natural gas or LNG (hereinafter called permitted liquefied gases) except under special permit and subject to special regulations issued by the Massachusetts Turnpike Authority (hereinafter called the Authority.)

(2) *Regulations Prescribed.* The Authority has issued the following special regulations applicable to entry upon and use of the Turnpike by such vehicles:

(a) The several words and phrases used herein shall have the definitions applicable thereto under the Rules and Regulations.

(b) No vehicle including tank trucks loaded or empty, used to transport permitted liquefied gases shall enter or use the Boston Extension at or between Interchange 15 at Weston and Interchange 24 at Boston.

(c) No vehicles, including tank trucks loaded or empty, used to transport permitted liquefied gases may enter upon or use the Turnpike at or between Interchange 1 at West Stockbridge and Interchange 14, Weston, unless a Special Hauling Permit Certification Card has been issued for such vehicle as provided herein.

(d) Vehicles, including tank trucks loaded or empty, used to transport permitted liquefied gases shall not operate on the Turnpike within 1000 feet or less of another such vehicle.

(e) Vehicles, including tank trucks loaded or empty, used to transport permitted liquefied gases, shall not stop on the Turnpike including the service areas thereof, except for any of the following reasons:

1. because their movement is obstructed;
2. because they are waiting to enter or leave a toll booth lane;
3. because of the directions of a Turnpike police officer or an official sign, signal, marking or device;
4. because they are disabled;
5. because of the requirements of federal regulations.

(f) An application for Special Hauling Permit for Transporting Permitted Liquefied Gases (hereinafter called Special Hauling Permit) shall be prepared in triplicate and filed with the Secretary-Treasurer of the Authority.

(3) *Conditions of Agreement.*

(a) The equipment, cargo, driver and operation of the vehicle on the Turnpike pursuant to a Special Hauling Permit shall conform with all federal and State regulations governing the transportation of permitted liquefied gases by motor carrier.

Such vehicle shall also conspicuously display, both fore and aft, signs with letters not less than 6 inches in height bearing appropriate words identifying the cargo, and, if empty, the cargo last carried.

(b) The Applicant shall assume all risk and responsibility for the existence or operation on the Turnpike of the vehicles to be covered by the Special Hauling Permit.

The Applicant shall indemnify and save harmless the Massachusetts Turnpike Authority, its members, officers, agents, and employees from all claims of whatever character resulting from or arising out of such existence or operation, except claims which result from or are due to the negligence of the Authority, its members, officers, agents and employees.

(c) The Applicant shall submit, with the application, certificates of insurance in the following coverages protecting him against the obligations imposed by this agreement:

Public Liability insurance affording coverage of not less than \$1,000,000/\$1,000,000 for all damages arising from bodily injury, including death and \$500,000 for property damages, including general, automobile and contractual liability.

Endorsement naming the "Massachusetts Turnpike Authority and/or the Commonwealth of Massachusetts and its members, officers, agents and employees" as additional insureds.

Endorsement with the following description of policy coverage: "The naming of the Massachusetts Turnpike

Authority as an additional insured does not exclude the liability of (the Permittee), and does not exclude the liability of any one acting by, through or for (the Permittee), for damages to the property or facilities of the Massachusetts Turnpike Authority".

Endorsement providing thirty (30) days notice before cancellation or material change of coverage provided. The notice shall be mailed to the Secretary-Treasurer, Massachusetts Turnpike Authority, Suite 3000, Prudential Center, Boston, Massachusetts 02199.

(d) The insurance coverage shall not limit the Applicant's obligation hereunder. The Applicant shall reimburse the Authority and The first National Bank of Boston, Trustee, as their interests may appear, for all expenses for replacement and repair of any Authority property damaged due to Applicant's trucks on the Turnpike, and which do not result from and are not due to the negligence of the Authority, its members, officers, agents and employees.

(e) The Applicant shall observe all Rules and Regulations governing the use of the Turnpike and these special regulations issued by the Authority in respect to the Special Hauling Permit.

(4) *Special Hauling Permit Certification Card.*

(a) The Special Hauling Permit shall be for a 12-month period, commencing April 1 and shall entitle the Permittee to make an unlimited number of trips on the Turnpike, or any designated portions thereof. It shall cover all of the Permittee's vehicles subject to this regulation, while using the Turnpike. The operator of each such vehicle shall carry and display to the toll collector at entry to and exit from, the Turnpike a Special Hauling Permit Certification Card, (hereinafter called Certification Card) issued by the Authority as evidence of the Special Hauling Permit.

(b) The Applicant shall specify the number of Certification cards required in the application for the Special Hauling Permit.

(5) *Fees.*

(a) The application fee for the Special Hauling Permit is \$200.00. It is not prorated and shall be submitted with the application.

(b) The charge for the first Certification Card is \$50.00 with a \$10.00 charge for each additional card issued during the term of the Permit. The appropriate amount for the specified number of Certification Cards shall be submitted with the application.

(c) Each vehicle operated on the Turnpike under a Special Hauling Permit shall pay the appropriate toll according to its classification.

(6) *Restrictions of Special Hauling Permits.*

(a) The Special Hauling Permit, though issued, may be revoked for cause by the Authority by notice in writing to the Permittee.

(b) Any trip permitted under a Special Hauling Permit, may be cancelled or suspended by the Authority, acting by the Captain of its State Police Patrol, or the senior officer of the Patrol in his absence, when, in the opinion of such officer, road weather, traffic or other conditions warrant such action.

(c) Violation of any provision of these regulations and breach of any of the agreements provided for the issuance of a Special Hauling Permit shall be cause for the revocation of such permit.

5.06: Appendix 2: Special Provisions Governing the Issuance and Applicable to the of Use Special Hauling Permits in General

(1) **General.** The Massachusetts Turnpike Authority issues special hauling permits only when compliance with the following size and weight limitations of the Rules and Regulations for Use of the Massachusetts Turnpike is impractical or impossible:

TABLE 1.

Weight:	(Single vehicle with 2 axles)	46,000 lbs.
Weight:	(Single vehicle with more than 2 axles and vehicle combinations)	73,000 lbs.
Width:		8 ft. 6 in.
Height:		13 ft. 8 in.
Length:	(Single vehicles except buses with 3 axles)	35 ft.
Length:	(Vehicle combinations)	55 ft.

Permits will not be issued for loads that can be divided or arranged so as to conform with the aforesaid limitations of the Rules and Regulations.

The Authority may prohibit any over-size or over-weight vehicle from using the Turnpike. The Authority may, without a hearing or given cause, revoke a special hauling permit either before or during the movement. Any material misrepresentation as to dimensions or weight of a vehicle or its load, made by the applicant for a special hauling permit, his agent or employee, shall void the permit, if issued.

(2) *Issuance of Special Hauling Permit.* All special hauling permits are subject to approval by the Chief Engineer of the Authority who has delegated to certain toll personnel authority to issue permits in a routine manner up to the following limits:

TABLE 2.

Weight:	(Single vehicle with more than 2 axles and vehicle combinations)	100,000 lbs.
Width:		13 ft.
Height:		13 ft. 9 in.
Length:	(Vehicle combinations)	100 ft.

The basic fee for a special hauling permit is \$5.00. In addition, the following mileage charges will be levied for excess dimensions:

Weight:	Two cents per mile per 1,000 lbs. in excess of 73,000 lbs.
Width:	Two cents per mile per foot in excess of 8 ft. 6 in.
Length:	One cent per mile per foot in excess of 55 ft.

Such permits may be issued by mail, if the special hauling permit fee has been prepaid. In addition to the special hauling permit fee, the regular toll charge for the applicable vehicle classification must be paid at the Exit Interchange.

Special hauling permits for single vehicles with 2 axles exceeding 46,000 lbs. in weight; for single vehicles with more than 2 axles and/ or vehicle combinations, exceeding 100,000 lbs. in weight; for vehicles exceeding 13 feet in width or 13 feet, 9 inches in height; for single vehicles, except buses with 3 axles, exceeding 35 feet in length and for vehicle combinations exceeding 100 feet in length will be issued by the Authority upon approval of the Chief Engineer only upon application in writing upon the appropriate form obtainable from the Authority. The fee for such a permit, if approved, is \$250.00 payable prior to entry upon the Turnpike.

(3) *Operation Under Special Hauling Permit.* A special hauling permit is valid for a trip in one direction between specified interchanges. Travel under a special hauling permit may be restricted to specified days and/or hours; no such travel will be allowed on the Boston Extension Eastbound between the hours of 7:00 A.M. and 10:00 A.M. or Westbound between the hours of 3:00 P.M. and 7:00 P.M.

Vehicles operating on the Massachusetts Turnpike under special hauling permits shall comply with the same requirements as to brakes, directional signals, lights, safety devices and equipment and as to distribution of weight on axles as are provided in Chapters 85 and 90 of the General Laws for vehicles operating upon the ways of the Commonwealth.

The driver of an over-size vehicle shall be responsible for checking clearance of toll lane and canopy before entry upon the Turnpike. The driver shall also check structures along the Turnpike for available clearance in over-height movements. The issuance of a permit shall not constitute any guarantee by the Authority of the adequacy of the Turnpike or structures thereon to support and accommodate the passage of the vehicle and load.

Over-size and over-weight vehicles must be capable of maintaining a minimum speed of 20 miles per hour.

Parking of over-size or over-weight vehicles is permitted only in service area parking lots. Parking of such vehicles in tandem trailer areas is prohibited.

The Authority, acting by the Captain of its State Police Patrol or senior officers of the Patrol in his absence, may suspend the use of a special hauling permit, when, in the opinion of such officer, road or weather conditions or the volume of traffic warrant such action.

(4) *Pilot Cars*. A pilot car to follow the over-size vehicle is required:

- (a) if the overhang is four or more feet and the load consists of poles, masts, booms or similar shapes; otherwise if the overhang is 10 or more feet;
- (b) if the vehicle is a drill rig with boom, a shovel or a crane;
- (c) if the vehicle is odd shaped or has an odd shaped load;
- (d) if the vehicle is more than 70 feet in length or more than 12 feet in width.

It two or more over-size vehicles are in convoy, one may be pilot for the other, but a separate pilot car must follow the last over-size vehicle.

If the vehicle exceeds 85 feet in length or 13 feet in width, it must have pilot cars preceeding and following it.

The requirements for a pilot car are:

- (a) light truck or passenger car,
- (b) two flashing amber lights visible from the rear.
- (c) 24" x 24" red flags on right and left rear,
- (d) sign on rear reading: "Over-size Load".

An over-size vehicle which is not required to be accompanied by a pilot car shall have a signal on the rear reading "Over-size Load".

(5) *Indemnity and Insurance.* The applicant for a special hauling permit shall be responsible and liable for injury to and death of, persons and damage to Turnpike and public or private property caused directly or indirectly by the existence upon the Turnpike or Extension of such vehicle or by its operation by the applicant, whether owner, lessor, or lessee, or his agents, employees or contractors pursuant to the special hauling permit and the applicant shall save the Massachusetts Turnpike Authority, its members, officers and employees harmless from liability for such injury, death and damage.

The applicant shall have sufficient insurance in force to protect adequately its legal and contractually assumed liabilities arising from the permitted use of the Massachusetts Turnpike including the Boston Extension thereof. As a minimum, the applicant shall have Public Liability Insurance affording coverage of not less than \$1,000,000/ \$1,000,000 for all damages arising from bodily injury, including death and \$500,000 for property damage, including general automobile and contractual liability.

REGULATORY AUTHORITY

730 CMR 5.00: c. 354, s. 5 of the Acts of 1952; c. 653, s. 1 of the Acts of 1955.

[1980 AMENDMENTS TO MASSACHUSETTS
TURNPIKE REGULATIONS CONCERNING
SINGLE TRACTOR-TRAILERS]

730 CMR: Massachusetts Turnpike Authority

730 CMR 5.04(4)(a)10 is amended by striking out subdivision 10 and inserting in place thereof the following:

10. Vehicles, including any load thereon, exceeding the following maximum weights or dimensions, except under special hauling permit or reducible load card issued pursuant to the Special Provisions Governing the Issuance and Applicable to the Use of Special Hauling Permits (730 CMR 5.06):

Table 1

Weight:	(a) Single vehicle with 2 axles	46,000 lbs.
	(b) single vehicle or vehicle combination with 3 axles	60,000 lbs.
	(c) Vehicle combination with 4 or more axles, except double bottom	80,000 lbs.
Width:		8 ft., 6 in.
Height:		13 ft., 8 in.
Length:	(a) Single vehicle, except bus	35 ft.
	(b) Bus	40 ft.
	(c) Vehicle combination except double bottom	60 ft.

Compliance with the limitations of this subparagraph and the applicable provisions of section 19A of chapter 90 of the General Laws is subject to verification for the protection of Turnpike traffic, structures and facilities.

730 CMR 5.05(5)(c) is amended by striking out division (c) and inserting in place thereof the following:

(c) Each vehicle operated on the turnpike under a Special Hauling Permit shall pay, through the authority's charge account procedure, the appropriate toll according to its classification.

730 CMR 5.06 Appendix 2 is amended by striking out Appendix 2 and inserting in place thereof the following:

5.06: Appendix 2: Special Provisions Governing the Issuance and Applicable to the Use of Special Hauling Permits.

(1) *General* The Massachusetts Turnpike Authority issues two types of special hauling permits for use of the Turnpike by vehicles exceeding the following weight limitations of the Rules and Regulations for use of the Massachusetts Turnpike and the Boston Extension Thereof:

Table 1

(a) Single vehicle with 2 axles	46,000 lbs.
(b) Single vehicle or vehicle combination with 3 axles	60,000 lbs.
(c) Vehicle combination with 4 or more axles, except double bottom	80,000 lbs.

(2) **SHP** A special hauling permit (SHP) is valid for a trip in one direction between specified interchanges. Such permits are issued by toll personnel in a routine manner, for appropriate vehicles for which a reducible load card has not been issued by the Authority up to the following limits:

Table 2

(a) single vehicle or vehicle combination with 3 axles	73,000 lbs.
(b) Vehicle combination with 4 axles	87,000 lbs.
(c) Vehicle combinations with 5 or more axles, except double bottom	99,000 lbs.

The basic fee for a SHP is \$5.00. In addition, a charge of two cents per mile per 1,000 pounds, or fraction thereof, in excess of 80,000 pounds will be levied.

Such permits may be issued by mail if the permit fee and mileage charge have been prepaid.

In addition to the fee and mileage charge for the SHP, which must be paid at the entry interchange for the vehicle to the Turnpike, the regular toll charge for the applicable vehicle classification must be paid at the exit interchange.

A SHP for a single vehicle with 2 axles exceeding 46,000 pounds in weight; for a vehicle combination with 3 axles exceeding 73,000 pounds in weight; for a vehicle combination with 4 axles exceeding 87,000 pounds in weight; for a vehicle combination, except double bottom, having 5 or more axles exceeding 99,000 pounds in weight will be issued by the Authority upon approval of the Chief Engineer only upon application in writing upon the appropriate form obtainable from the Authority. The fee for such a permit, if issued, is \$250.00 payable prior to entry upon the Turnpike.

(3) **RL Card** Upon application by the owner or lessee of a vehicle for which a valid reducible load permit has been issued by the commissioner of public works pursuant to section 30A of chapter 85 of the General Laws, allowing its operation at a weight, with its load, of not more than 73,000 pounds if it has 3 axles, or 87,000 pounds if it has 4 axles or 99,000 pounds if it has 5 or more axles, and upon payment of twenty-five percent of the annual fee paid to the registry of motor vehicles for the sticker issued to such vehicle pursuant to section 19D of chapter 90 of the General Laws, the Authority shall issue a reducible load card (RL Card) specifying the same gross weight as that authorized for the vehicle listed in the application.

The RL Card shall allow the operation on the Massachusetts Turnpike and Boston Extension of a vehicle of the owner or lessee named therein which exceeds the limits permitted by

5.04(4)(a)(10) provided, however, that the vehicle has a valid reducible load permit issued by the commissioner of public works evidenced by a sticker issued by the registry of motor vehicles.

If the gross weight specified in the RL Card in the possession of the driver of the vehicle being operated on the Massachusetts Turnpike or Boston Extension differs from the gross weight specified in the reducible load permit for that vehicle issued by the commissioner of public works pursuant to section 30A of chapter 85 of the General Laws, the lesser gross weight shall be used in determining liability for the penalties provided in section 15c of chapter 354 of the Acts of 1952, as amended.

An RL Card issued to an owner or lessee may be used in connection with the operation on the Massachusetts Turnpike or Boston Extension of any vehicle of that owner or lessee for which a reducible load permit has been issued by the commissioner of public works and which displays a valid sticker issued by the registry of motor vehicles pursuant to section 19D of chapter 90 of the General Laws.

Upon application and payment of the appropriate fees, the Authority shall issue the number of RL Cards as the owner or lessee may request for his vehicles with valid reducible load permits issued by the commissioner of public works pursuant to section 30A of chapter 85 of the General Laws.

A RL Card shall be valid for one year from the date of issue. The fee paid for a RL Card shall not be refundable.

Each vehicle operating on the Massachusetts Turnpike and Boston Extension with a RL Card shall pay the appropriate toll according to its classification.

(4) Over-size Vehicles The Massachusetts Turnpike Authority issues special hauling permits (SHP) only when compliance with the following size limitations of the Rules and Regulations for Use of the Massachusetts Turnpike and the Boston Extension thereof is impossible or impractical.

Table 3

Width		8 ft. 6 in.
Height		13 ft. 8 in.
Length	(a) Single vehicle, except bus	35 ft.
	(b) Bus	40 ft.
	(c) Vehicle combination except double bottom	60 ft.

A permit may not be issued if, in the opinion of the Authority, a load can be divided or arranged so as to conform with the aforesaid size limitations of the Rules and Regulations.

The Authority may prohibit any over-size vehicle from using the Turnpike.

(5) Issuance of SHP

(a) **By Toll Personnel** SHP is subject to approval by the Chief Engineer of the Authority who has delegated to certain toll personnel the authority to issue such permits in a routine manner, for appropriate vehicles, up to the following limits:

Table 4

Width		13 ft.
Height		13 ft. 9 in.
Length	Vehicle combination, except double bottom	100 ft.

The basic fee for a SHP is \$5.00. In addition, the following mileage charges will be levied for excess dimensions:

Width: Two cents per mile per foot, or fraction thereof, in excess of 8 feet 6 inches.

Length: Two cents per mile per foot, or fraction thereof, in excess of 60 feet.

Such permits may be issued by mail if the special hauling permit fee and mileage charges have been prepaid.

In addition to the SHP fee and mileage charges, which must be paid at the entry interchange to the Turnpike, the regular toll charge for the applicable vehicle classification must be paid at the exit interchange.

(b) **By Chief Engineer** A SHP for vehicles exceeding 13 feet in width or 13 feet 9 inches in height; for single vehicles, except buses, exceeding 35 feet in length; for buses exceeding 40 feet in length and for vehicle combinations, except double bottoms, exceeding 100 feet in length, will be issued by the Authority upon approval of the Chief Engineer only upon application in writing upon the appropriate form obtainable from the Authority. The fee for such a permit, if issued, is \$250 payable prior to entry upon the Turnpike.

(6) Revocation and Suspension of Permits

The Authority may, for cause, revoke any SHP or RL Card, without a hearing, either before or during the movement under such authorization.

Any material misrepresentation as to weight or dimensions of a vehicle or its load, made by the applicant for a SHP or RL Card, his agent, employee or lessee, shall void the authorization, when and if issued.

The Authority acting by the Captain of its State Police patrol, or in his absence, the senior officer of the patrol, may suspend the use of a SHP or RL Card, when in the opinion of such officer, road or weather conditions or the volume of traffic warrants such action.

(7) **Operation** A SHP is valid for a trip in one direction between specified interchanges. Travel under a SHP may be restricted to specified days and/or hours. No such travel is allowed on the Boston Extension eastbound between 7:00 A.M. and 10:00 A.M. or Westbound between 3:00 P.M. and 7:00 P.M.

Vehicles operating on the Turnpike and Boston Extension under a SHP or RL Card shall comply with the requirements as to brakes, directional signals, lights, safety devices and

equipment and as to distribution of weight on axles as are provided in chapter 90 of the General Laws for similar vehicles operating upon the ways of the Commonwealth.

The driver of an over-size vehicle shall be responsible for checking clearance of toll lane and canopy before entry upon the Turnpike or Extension. The driver shall also check structures along the Turnpike and Extension for available clearance in over-height movements.

Issuance of a SHP or RL Card does not constitute a representation by the Authority of the adequacy of the Turnpike and Boston Extension or structures thereon to support and accommodate the passage of the vehicle and load.

Over-size and over-weight vehicles must be capable of maintaining a minimum speed of 20 miles per hour.

Parking of over-size and over-weight vehicles is permitted only in service area parking lots. Parking of such vehicles in double bottom areas is prohibited.

(8) Pilot Cars

(a) A pilot car to follow the over-size vehicle is required:

- (1) if the overhang is 4 or more feet and the load consists of poles, masts, booms or similar shapes, otherwise if the overhang is 10 feet or more.
- (2) if the vehicle is a drill rig with boom, a shovel or a crane.
- (3) if the vehicle is odd shaped or has an odd shaped load.
- (4) if the vehicle, except a double bottom, is more than 70 feet in length or more than 12 feet in width.

(b) If two or more over-size vehicles are in convoy, one may be pilot for the other, but a separate pilot car must follow the last over-size vehicle.

(c) If the vehicle, except a double bottom, exceeds 85 feet in length or 13 feet in width, it must have pilot cars preceding and following it.

(d) The requirements for a pilot car are:

1. light truck or passenger car.
2. two flashing amber lights visible from front and rear.
3. 24" x 24" red flags on right and left rear.
4. sign reading: "Over-size Load"; an over-size vehicle which is not required to be accompanied by a pilot car shall have a sign on the rear reading: "Over-size Load."

(9) **Indemnity and Insurance** The applicant for a SHP or RL Card shall be responsible for injury to, and death of, persons and damage to Authority, public and private property caused directly or indirectly by the existence upon the Turnpike or Boston Extension of such vehicle or by its operation by the applicant, whether owner, lessor or lessee, or by his agents, employees or contractors pursuant to the SHP or RL Card and the applicants shall save the Massachusetts Turnpike Authority, its members, officers and employees harmless from injury, death and damage.

The applicant shall have sufficient insurance in force to protect adequately its legal and contractually assumed liabilities arising from the permitted use of the Massachusetts Turnpike including the Boston Extension thereof. As a minimum, the applicant shall have public liability insurance providing coverage of not less than \$1,000,000/\$2,000,000 for bodily injury, including death and \$500,000 for property damage, including general automobile and contractual liability.

Appendix J

COMMONWEALTH OF MASSACHUSETTS
DISTRICT COURT DEPARTMENT
WORCESTER DIVISION

WORCESTER, SS.

Nos. See list attached to Defendants' Memorandum
of Law And Fact as Exhibit A

COMMONWEALTH OF MASSACHUSETTS

v.

B&W TRANSPORTATION, INC.
GEORGE KYER ENTERPRISES, INC.
and R.F.C. TRANSPORT, INC.

DEFENDANTS' MOTION FOR A REQUIRED FINDING
OF NOT GUILTY, OR, IN THE ALTERNATIVE,
DISMISSAL OF THE COMPLAINTS

Defendants, B&W Transportation, Inc., George Kyer Enterprises, Inc. and R.F.C. Transport, Inc., hereby move that this Honorable Court enter a required finding of not guilty, or, in the alternative, dismiss the above-referenced Complaints, and state as grounds therefor the following:

1. 730 CMR 4.02 arbitrarily discriminates against a class of vehicle owners and operators, including Defendants, without rational basis, and therefore violates the Fourteenth Amendment to the United States Constitution, and Article 1 of the Declaration of Rights of the Massachusetts Constitution;

2. The burden imposed on interstate commerce by 730 CMR 4.02 is clearly excessive in relation to the asserted local benefits, and said regulation thus violates the Commerce Clause; and

3. 730 CMR 4.02 violates due process safeguards embodied in the Fourteenth Amendment to the United States Constitution and Article 12 of the Massachusetts Constitution in that it is (a) unnecessarily broad, (b) arbitrary and without substantial relation to the object sought to be obtained, and (c) unnecessarily and unreasonably vague.

WHEREFORE, Defendants move that this Honorable Court enter a required finding of not guilty, or, in the alternative, dismiss the Complaints.

By their attorney,

(s) H. GLENN ALBERICH
H. GLENN ALBERICH
HAWKES & GOLDINGS
One Walnut Street
Boston, Massachusetts 02108
(617) 367-2900

Date: May 11, 1981

CERTIFICATE OF SERVICE

I, H. Glenn Alberich, hereby certify that a copy of Defendants' Motion For A Required Finding Of Not Guilty, Or In The Alternative, Dismissal Of The Complaints was served upon the Commonwealth by hand delivering said copy to its attorney on May 11, 1981, addressed as follows:

JAMES G. REARDON, Special Assistant
District Attorney
390 Main Street
Worcester, Massachusetts 01608

(s) H. GLENN ALBERICH
H. GLENN ALBERICH

A-97

COURT COPY
MOTOR VEHICLE

No. 23535

1981

COM. vs. B & W TRANS., INC.

On Complaint of Paul O. Hedlund for
MTA Permitting overloaded vehicle to be Operated

COMPLAINT

CENTRAL WORCESTER DIVISION

DiCICCO, J. — HAYECK, J. — LUBY, J.

KELLEHER, J. — O'NEILL, J.

Jun 11

First Instance Jury Trial — 6-11-81

E234032F

THE COMMONWEALTH OF MASSACHUSETTS

DISTRICT COURT DEPARTMENT
CENTRAL WORCESTER DIVISION

WORCESTER, to wit:

To the CENTRAL WORCESTER DIVISION, holden at Worcester for the transaction of criminal business, within the county of Worcester, Paul O. Hedlund of Charlton in behalf of the Commonwealth of Massachusetts, on oath complains that B&W Trans, Inc. of said Randolph, on the Twenty-third day of April in the year nineteen hundred and eighty-one at Auburn, in said County, did allow a tandem trailer unit to be operated on a public way to wit: Rte 90 with its load in excess of the load limitations. 13,280

\$30. per 1,000 lbs. up to and including 10,000 lbs

\$60. per 1,000 lbs. from 10,001 and up with no maximum

WORCESTER, ss.

Paul O. Hedlund, Complainant

TRUE COPY, ATTEST

(s) THOMAS J. NOONAN, *Clerk/Magistrate*

#1071H SUMMONS MAILED

MAY 1981

ad under the provisions
of G.L. Chapt. 90c, Sect. 4A

No. 81A-651

COMMONWEALTH VS.
GEORGE KYER ENTERPRISES, INC.

For
Allowing overweight
Rec'd Sept. 24, 1980

COMPLAINT
DISTRICT COURT OF WESTERN HAMPDEN

TNP 27-81-0174
0868 ► end
Tnp 29-81-0175
0000 ► 2526

THE COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

To the District Court of Western Hampden, holden at Westfield, for the transaction of criminal business within the County of Hampden.

Douglas C. Brangan of Massachusetts State Police, Westfield, in said County, in behalf of the Commonwealth of Massachusetts, on oath complains that George Kyer Enterprises, Inc., Box 595, of said Teaneck, New Jersey, on the 16th day of September in the year of our Lord one thousand nine hundred and eighty at said Blandford in said County, and within the judicial district of said Court, upon a certain way, or a place to which the public has the right of access called Massachusetts Turnpike did then and there allow a certain motor vehicle to wit a commercial vehicle carrying a load in excess of gross registered weight in violation of the Rules and Regulations for the use of the Massachusetts Turnpike.

Reg. No.; XUR73M

DOUGLAS C. BRANGAN, Complainant

A true copy attest:

(s) CARLOS (ILLEGIBLE), *Clerk of said Court*

NOV 1 1983

ALEXANDER L. STEVAS.
CLERK

NO. 83-449

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1983

BURKE DISTRIBUTING CORPORATION,
d/b/a B & W TRANSPORTATION, et al.,
Appellants

V.

COMMONWEALTH OF MASSACHUSETTS,
Appellees

ON APPEAL FROM THE SUPREME
JUDICIAL COURT FOR THE
COMMONWEALTH OF MASSACHUSETTS

MOTION TO AFFIRM

FRANCIS X. BELLOTTI
ATTORNEY GENERAL

FREDERICK W. RILEY
Assistant Attorney General
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NO. 83-449

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Appellants

V.

COMMONWEALTH OF MASSACHUSETTS,
Appellees

ON APPEAL FROM THE SUPREME
JUDICIAL COURT FOR THE
COMMONWEALTH OF MASSACHUSETTS

MOTION TO AFFIRM

The Appellee moves the Court to affirm the judgment of the Supreme Judicial Court of Massachusetts on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

I. INTRODUCTION

The facts are outlined in the opinion of the Supreme Judicial Court for the Commonwealth of Massachusetts, 388 Mass. 799, 448 N.E.2d 728 (1983).^{1/} The regulation in question is 730 C.M.R. §4.02.^{2/}

II. ARGUMENT

A. The Decision Of The Supreme Judicial Court Employs Analysis Which Fully Comports With The Decisions Of This Court.

The equal protection analysis of the Supreme Judicial Court of the regulations limiting tandem trailers traveling the Massachusetts Turnpike to

^{1/} Appearing in Appellant's Appendix A., pp. A.1-11 hereinafter referred to as App. A.; A. 1-11.

^{2/} App. I; A. 49-50.

gross weights of 127,400 pounds while allowing single tractor-trailers of gross weights up to 99,000 pounds to use the same roadway must begin with the findings by the trial court that the allowable weights of single units on the Turnpike were increased pursuant statutes which prohibited the Turnpike Authority from disallowing travel on the Turnpike by vehicles which could otherwise travel on the other public ways of the Commonwealth.^{3/} The trial court also found that the Authority had increased those single unit weights against the recommendations of its chief engineer and consulting engineering firm.^{4/}

^{3/} App. B., A-16; App. A, A-2 ftnt. 5.

^{4/} [Id.].

However, the only roadway in the Commonwealth of Massachusetts which may be traversed by tandem trailer units is the Massachusetts Turnpike.^{5/}

Beginning with this basis the Supreme Judicial Court rejected the trial court's findings that the regulation did not bear a reasonable relation to the impact on turnpike bridges.^{6/}

Massachusetts courts have always afforded the same presumption of constitutionality to regulations enacted pursuant to statutory authority as is afforded to legislative enactments.

Greenleaf Fin Co. v. Small Loans

^{5/} App. B., A-13; App. A., A-2.

^{6/} App. A., A-4.

Regulatory Board, 377 Mass. 282, 293, 385 N.E.2d 1364 (1979). This Court has also consistently afforded a presumption of constitutional validity to such enactments. See, for example, Goldblatt v. Hempstead, 369 U.S. 590, 596 (1962) and cases cited. See also, New Orleans v. Dukes, 427 U.S. 297, 303 (1976).

Overcoming this presumption is a heavy burden. It is only the "invidious discrimination, the wholly arbitrary act, which cannot stand consistently with the Fourteenth Amendment." New Orleans v. Dukes, supra at 303-304. So long as the classification rationally furthers a legitimate state purpose it will stand. Some reasonable basis is all that is necessary for a classification to withstand attack. It need not result in a mathematical

certitude so long as any state of facts reasonably may be conceived to justify it. Dandridge v. Williams, 397 U.S. 471, 485 (1970); McGowan v. Maryland, 366 U.S. 420, 426 (1961). See also, Exxon Corp. v. Governor of Maryland, 437 U.S. 117, 124 (1978); Williamson v. Lee Optical Co., 348 U.S. 483 (1955).

Thus, the Supreme Judicial Court applied the "debatable" standard employed by this Court in United States v. Carolene Products Corp., 304 U.S. 144, 154 (1938), reasoning that a challenge to a classification must show irrationality of that classification and will not prevail if a question is at least debatable if viewed in light of what evidence the [promulgating authority] may have had available. Id. at 153-154 (emphasis supplied).

Thus, the state court searched the record to find evidence of "debatability" and determined the Commonwealth had introduced evidence to show that tandem trailer units, even at the weight allowed by present regulation, overstressed a bridge structure to a significantly larger percentage than a single trailer unit at maximum permit weight.^{7/} This evidence, coupled with the findings of the trial court that the maximum weight for single trailer units had been increased against engineering advice, lead the court to conclude that since the regulation was supported by evidence that it preserved safety and integrity of bridge structures the equal

^{7/} App. A.; A-4.

protection claim must fail.^{8/}

This rationale comports with the analysis which this Court has applied in equal protection cases challenging economic or safety regulations. Exxon v. Governor of Maryland, 437 U.S. 117 (1978); Hughes v. Alexandria Scrap Corp., 426 U.S. 794 (1976). Appellants assert that the Supreme Judicial Court rejected the findings and conclusions of the trial court thus contravening the settled principles of appellate review. Appellant's Jurisdictional Statement, p. 14. This assertion overlooks the role of the reviewing court when presented with an equal protection claim. Once the legislature has drawn a classification, neither the findings of

^{8/} App. A.; A-6.

a court arrived at by weighing evidence nor the verdict of a jury can be substituted for it. Carolene, supra at 154. It is the very admission that facts are arguable that immunizes from constitutional attack a legislative judgment represented by a statute. Vance v. Bradley, 440 U.S. 93, 112 (1979).

B. The Commerce Clause Analysis
Employed By The Supreme
Judicial Court Fully Comports
With Decisions Of This Court.

The Supreme Judicial Court began its analysis of appellant's challenge to the Massachusetts Turnpike Authority's regulation limiting the gross weight of tandem trailers traversing the Massachusetts Turnpike by noting that the appellants did not dispute that the Commonwealth has a legitimate interest

in regulating truck weights to foster highway safety by preserving bridge and road surfaces.^{9/}

The Court noted that the regulation did not discriminate between in-state and out-of-state business and distinguished this dispute from those that this Court considered in Raymond Motor Transportation, Inc. v. Rice, 434 U.S. 429 (1978) and Kassell v. Consolidated Freightways Corp. of Del., 450 U.S. 662 (1981).

First, those cases discussed highway safety in terms of safe operation of tandems to prevent accidents rather than in the context of preserving bridge structures and roadbeds. Second, in those cases there had been no evidence

^{9/} App. A.; A. 8-11.

that safety was impaired whereas in the instant matter testimony of experts was presented as to overstress on bridges caused by tandem trailers loaded in excess of the allowed weight. Thirdly, the Supreme Judicial Court pointed out that other contiguous and neighboring states do not allow tandem trailers at all. Thus, the court not only distinguished Raymond, supra and Kassell, supra, but also confronted the notion that the Massachusetts regulation imposes an impermissible burden on interstate commerce.

Finally, the Supreme Judicial Court observes that interstate commerce is only burdened if tandem trailer operators choose to exceed the Massachusetts weight limits and must separate their trailers or reload at the Massachusetts border. Certainly, there

is not here an outright ban on tandem trailers as in Kassell, supra or Raymond, supra.

The court concluded that interstate commerce was not impermissibly burdened by the regulation.

Appellants contend that the Supreme Judicial Court characterized the regulation in question as a safety regulation rather than a regulation which sets an acceptable level of wear on road surfaces and structures.

First, in addressing this issue the appellants blatantly misquote the Supreme Judicial Court.^{10/} In addition, this assertion is a contradiction of a stipulation made by the parties and recognized by the

^{10/} Compare indented quote, Appellant's Jurisdictional Statement, p. 17 with Appendix A-8 (leaving out the term "structures" and pluralizing "surfaces").

Supreme Judicial Court that the primary purpose of the regulations is to preserve the integrity and safety of bridges under the control of the Turnpike Authority.^{11/} One cannot reasonably assert that a regulation which is promulgated for the purpose of preserving the safety of bridges is not related to highway safety.

Appellants also assail the Supreme Judicial Court's analysis of the "state interest" and "commerce burden" factors as they relate to the commerce clause, averring that the court only considered increased cost per tandem trip but failed to consider other factors. There were, however, no findings by the trial court concerning those other factors. The court found that, based on the record, the appellants had failed to

^{11/} App. A.; A-2.

show a substantial burden on interstate commerce. See generally, South Carolina Hwy. Dept. v. Barnwell Bros., 303 U.S. 177 (1938).

C. Appellant's Due Process Claims Are Equally Without Merit.

The Supreme Judicial Court treated appellant's assertion that less restrictive alternatives to the regulation in question should have been considered as a due process claim.^{12/} Appellants analyze these assertions in terms of the Commerce Clause. This distinction is of little import. The judicial function under the Commerce Clause as well as the Fourteenth Amendment, stops with the inquiry as to whether the state legislature in

^{12/} App. A.; A-G.

adopting regulations has acted within its province, and whether the means of the regulation chosen are reasonably adapted to the end sought. A court cannot determine which is the most suitable restriction to be applied of those that are possible. South Carolina Hwy. Dept. v. Barnwell Bros., 303 U.S. 177, 190 (1938).

The Supreme Judicial Court found that the regulation was not arbitrary but is rationally related to the purpose of preventing excessive stress on the Turnpike's long span bridges. Thus a comparison of less restrictive alternatives to the regulation in question is neither required or permitted.

Finally, appellants assert that the provisions of the regulation are conflicting and should be held void for

vagueness. But, as the Supreme Judicial Court correctly held the prohibition against exceeding gross weights of 127,400 pounds for tandem trailer combinations clearly puts an operator on notice of the regulation's strictures. The other sections of the regulation are merely corollaries.

III. CONCLUSION

Wherefore, Appellee respectfully submits that the question upon which this case depends is so unsubstantial as not to need further argument and Appellee respectfully moves the Court to affirm the judgment entered in this cause by the Supreme Judicial Court for the Commonwealth of Massachusetts.

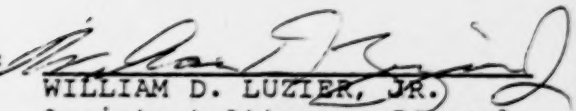
Respectfully submitted,

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Dated: October 28, 1983